

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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<b>TDS Metrocom, Inc.</b>	)	
<b>Petition for Arbitration of Interconnection Rates,</b>	)	
<b>Terms and Conditions and Related Arrangements</b>	)	<b>Docket 01-0338</b>
<b>With Illinois Bell Telephone Company d/b/a</b>	)	
<b>Ameritech Illinois Pursuant to Section 252(b)</b>	)	
<b>Of the Telecommunications Act of 1996</b>	)	

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**POST-HEARING BRIEF OF TDS METROCOM, INC.**

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## **GENERAL PRINCIPLES**

Many of the issues raised by the parties do not have direct controlling authority in either a statute or administrative rule. These issues thus fall within the Commission's discretionary authority, under 47 U.S.C. § 252(c). This does not mean that the Panel is totally without guidance in deciding these issues. This is an arbitration to establish an interconnection agreement under the Telecommunications Act of 1996 ("Act"). As such, Ameritech Illinois is required to provide interconnection, access to UNEs, and collocation on "rates, terms, and conditions that are just, reasonable, and nondiscriminatory." (47 U.S.C 251(c)). In determining the reasonableness of the rate terms and conditions, the Commission must keep in mind the overriding purpose of the Act.

The Telecommunications Act of 1996 fundamentally changes telecommunications regulation. In the old regulatory regime government encouraged monopolies. In the new regulatory regime, we and the states remove the outdated barriers that protect monopolies from competition and affirmatively promote efficient competition using tools forged by Congress. Historically, regulation of this industry has been premised on the belief that service could be provided at the lowest cost to the maximum number of consumers through a regulated monopoly network. State and federal regulators devoted their efforts over many decades to regulating the prices and practices of these monopolies and protecting them against competitive entry. The 1996 Act adopts precisely the opposite approach. Rather than shielding telephone companies from competition, the 1996 Act requires telephone companies to open their networks to competition. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC

Rcd 13042 (1996) (“*Local Competition Order*”).  
(para. 1)

Thus, in deciding these issues, the Commission should impose those terms most likely to promote competition and not those designed to protect Ameritech Illinois’ monopoly. The FCC further stated:

In this rulemaking and related proceedings, we are taking the steps that will achieve the pro-competitive, deregulatory goals of the 1996 Act. The Act directs us and our state colleagues to remove not only statutory and regulatory impediments to competition, but economic and operational impediments as well.

*Id.* It is precisely this admonition to remove economic and operational impediments to competition that must guide this Commission when deciding the disputed issues in this interconnection agreement.

## DISPUTED ISSUES

### Issue TDS-11

#### Should the parties be required to pay disputed amounts into escrow?

#### GTC Sections 15.4 through 15.7, and Section 16.3.1

#### DISPUTED LANGUAGE:

Interconnection Agreement-  
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15.4 If any portion of an amount due to a Party (the “**Billing Party**”) for Resale Services or Network Elements under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the “**Non-Paying Party**”) shall, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes (“**Disputed Amounts**”) and include in such written notice the specific details and reasons for disputing each item listed in Section 16.3.4. The Non-Paying Party shall pay when due (i) all undisputed amounts to the Billing Party, and (ii) *all Disputed Amounts into an interest bearing escrow account with a Third Party escrow agent mutually agreed upon by the Parties. To be acceptable, the Third Party escrow agent must meet all of the following criteria:*

15.4.1 *The financial institution proposed as the Third Party escrow agent must be located within the continental United States;*

15.4.2 *The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and*

15.4.3 *The financial institution proposed as the Third Party escrow agent must be authorized to handle Automatic Clearing House (ACH) (credit transactions) (electronic funds) transfers.*

15.4.4 *In addition to the foregoing requirements for the Third Party escrow agent, the disputing Party and the financial institution proposed as the Third Party escrow agent must agree that the escrow account will meet all of the following criteria:*

15.4.4.1 *The escrow account must be an interest bearing account;*

15.4.4.2 *All charges associated with opening and maintaining the escrow account will be borne by the disputing Party;*



*the Non-Paying Party, together with any accrued interest thereon;*

*15.7.3 within fifteen (15) calendar days after resolution of the Dispute, the portion of the Disputed Amounts resolved in favor of the Billing Party shall be released to the Billing Party, together with any accrued interest thereon; and*

*15.7.4 no later than the third Bill Due Date after the resolution of the dispute regarding the Disputed Amounts, the Non-Paying Party shall pay the Billing Party the difference between the amount of accrued interest such Billing Party received from the escrow disbursement and the amount of Late Payment Charges such Billing Party is entitled to receive pursuant to Section.*

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16.3.1 If the written notice given pursuant to Section 15.4 discloses that a CLEC dispute relates to billing, then the procedures set forth in this Section 16.3.1 shall be used and the dispute shall first be referred to the appropriate service center [**SBC-AMERITECH** Service Center; for resolution. In order to resolve a billing dispute, CLEC shall furnish **AMERITECH-ILLINOIS** written notice of (i) the date of the bill in question, (ii) CBA/ESBA/ASBS or BAN number of the bill in question, (iii) telephone number, circuit ID number or trunk number in question, (iv) any USOC information relating to the item questioned, (v) amount billed and (vi) amount in question and (vii) the reason that CLEC disputes the billed amount. *To be deemed a “dispute” under this Section 16.3.1 CLEC must provide evidence that it has established an interest bearing escrow account that complies with the requirements set forth in Section 15.4 of this Agreement and deposited all Unpaid Charges relating to Resale Services and Network Elements into that escrow account. Failure to provide the information and evidence required by this Section 16.3.1 not later than twenty-nine (29) calendar days following the Bill Due Date shall constitute CLEC’s irrevocable and full waiver of its right to dispute the subject charges.*

**ARGUMENT:**

Ameritech Illinois has proposed language for these sections, to which TDS Metrocom has objected, which would require TDS Metrocom to pay disputed amounts into escrow as a precondition for challenging any billing.

TDS Metrocom has provided significant evidence in the record to show that it has had repeated billing disputes with Ameritech in the past, and that many of those disputes have been resolved in favor of TDS Metrocom. (TDS Exhibit 5, Jackson Direct p. 5, lines 8-10). Under the language proposed by Ameritech Illinois, TDS Metrocom would be required to tie up, for a long period of time, significant sums of money which it did not owe until TDS Metrocom could prove to Ameritech Illinois' satisfaction that Ameritech Illinois had made errors. Further, TDS Metrocom has provided evidence in the record that while such money is tied up it would not be available to TDS Metrocom for legitimate business purposes such as marketing and expanding its network. (TDS Exhibit 5, Jackson Direct p. 6, lines 2-6). This would clearly hamper TDS Metrocom's ability to compete with Ameritech Illinois for customers.

With the escrow provision, even if Ameritech Illinois sends repeatedly erroneous bills, which TDS Metrocom has testified occurred over a three year period in Wisconsin (TDS Exhibit 5, Jackson Direct p. 7, lines 17-18), there will be absolutely no negative sanction to Ameritech Illinois for doing so. On the contrary every time that Ameritech Illinois sends an erroneous bill it will gain a competitive advantage over a competitor by requiring TDS Metrocom to place

money, which is not properly owed, into an escrow account. If, as was frequently the case with the past dealings between TDS Metrocom and Ameritech in Wisconsin, it is later shown that Ameritech Illinois had sent the bill in error, (TDS Exhibit 5, Jackson Direct p. 8, lines 2-5) there is no absolutely no negative consequence to Ameritech Illinois. The worst that could happen to Ameritech Illinois is that it does not receive money to which it was never entitled in the first place. TDS Metrocom on the other hand, just for the privilege of proving Ameritech Illinois wrong, would be forced to tie up significant sums of money, which cannot then be used to compete with Ameritech Illinois.

By way of contrast, if TDS Metrocom disputes a bill, and the bill is later found to be correct, TDS Metrocom will have to pay interest and late fees on the bill from the original due date, as set forth in Section 15.7.4. In addition, if TDS Metrocom does not pay amounts due or that are found to be due after a dispute, Ameritech is permitted to terminate the agreement. Thus there are significant negative consequences to TDS Metrocom for disputing a bill without a good reason.

Further, the escrow provisions are discriminatory in that they will clearly only apply to TDS Metrocom. During negotiations, Ameritech Illinois claimed that the provision is reciprocal in that Ameritech Illinois would be required to place money in escrow if it disputed a bill. Ameritech Illinois' supposed concession that it will agree to escrow is an entirely illusionary promise. This is because the language clearly applies only to amounts due "*for Resale Services or*

*Network Elements under this Agreement"*. Ameritech Illinois does not purchase Resale Services or Network Elements under this agreement. Thus, the escrow requirement discriminates between the CLECs and Ameritech Illinois, not between two or more CLECs.

If Ameritech Illinois can send out an erroneous bill, and know that the CLEC will have to put money in escrow just to get the bill corrected, money which then cannot be used to compete with Ameritech Illinois, Ameritech Illinois will have no incentive to correct its bills, and in fact will have every incentive to send error filled bills in order to gain a competitive advantage over the CLECs such as TDS Metrocom.

Ameritech Illinois argues that the escrow requirement is needed to protect against a CLEC that may dispose of assets after disputing a bill. The problem is that the remedy sought by Ameritech Illinois provides a sanction much broader than the issue it has framed. If in fact there is a CLEC that is disputing bills in bad faith, Ameritech Illinois has recourse to the Commission to deal with that CLEC. The TDS Metrocom position still leaves Ameritech Illinois with significant protection.

Ameritech Illinois is protected from the financial consequences for which it seeks the escrow provisions by the fact that it has the ability to collect a deposit from CLECs who cannot show a credit history with Ameritech Illinois. (TDS

Exhibit 5, Jackson Direct p. 6, lines 9-10).<sup>1</sup> In any event, Ameritech Illinois claims that the deposit requirement is designed to protect Ameritech Illinois if a CLEC cannot pay its bill. The escrow requirement is also designed to protect Ameritech Illinois if a CLEC cannot pay its bill but only applies after a dispute as to the bill. Clearly Ameritech Illinois is already protected from this by the deposit. If it is Ameritech Illinois' contention that the CLEC could hide assets after disputing the bill, it should be noted that a CLEC who truly wished to "stiff" Ameritech Illinois could just as easily hide assets before the bill is even issued. The escrow does little to provide Ameritech Illinois with additional protection from a true deadbeat, while inflicting a serious hardship on every honest CLEC who has a good faith dispute over an Ameritech Illinois bill. The remedy proposed by Ameritech Illinois by the escrow provisions in the agreement sweeps up all of the CLECs, the guilty and the innocent, and treats all as guilty.

Of course Ameritech Illinois then touts this somehow as a virtue, that the provision is nondiscriminatory in that it treats all CLECs the same. That has never been the problem because having no escrow provisions at all would also treat all CLECs the same. The problem is that the escrow requirement treats the CLECs

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<sup>1</sup> Note that this does not apply to normal credit worthiness, only to credit history with Ameritech Illinois. Presumably any new CLEC, no matter how financially stable, would need to post the deposit if it had not done business with Ameritech Illinois in the past. For example, Verizon, or even a company like Microsoft or Berkshire Hathaway would need to post a deposit if they had no history directly with Ameritech Illinois. This contradiction makes it seem unlikely that Ameritech Illinois is really interested in the financial stability of the other party, and more interested in collecting deposits from potential competitors.

differently than Ameritech Illinois, and thus gives Ameritech Illinois a competitive advantage.

The requirement that the escrow requirement not apply unless there are two disputes in a year as held in the Level 3 arbitration, Docket 00-0332, does nothing to solve the problems identified here. TDS Metrocom would have been constantly under the escrow requirement even under such a scheme since TDS Metrocom has been forced to dispute numerous bills each year. (TDS Exhibit 5, Jackson Direct p. 7, lines 17-18). The ICC in the Level 3 arbitration based its decision at least in part on the premise that "AI does not gain any advantage by issuing an erroneous billing." (P17). As shown conclusively above, that statement is true only if there is NO escrow requirement. Where there is an escrow requirement, Ameritech Illinois would gain an advantage by requiring a competitor to tie up money just to correct Ameritech Illinois' mistakes. The ICC further found that the requirement that the escrow not apply until there have been two disputes in a year protects the CLECs. TDS Metrocom respectfully submits that such a requirement does nothing to remove the improper incentives to Ameritech Illinois. The heart of the problem is that if Ameritech Illinois sends out an erroneous bill, whether intentionally or not, there is absolutely no negative consequence for Ameritech Illinois. If the escrow requirement is in place, it gets even worse. Not only is there no negative consequence to sending an erroneous bill, Ameritech Illinois can be rewarded for doing so by the fact that one of Ameritech Illinois' competitors will be required to tie up large sums of money, merely for the privilege of proving

to Ameritech Illinois that its bill is wrong. Stating that the escrow will apply after two disputes merely provides an incentive for the first two bills each year to contain errors. For these reasons, the result of the Level 3 arbitration on this issue should not be followed.

Ameritech Illinois should not be permitted to insert the language on escrow requirements, and TDS Metrocom should be awarded this issue.

**Issue TDS-27**

**How should the list of UNEs that Ameritech Illinois must provide be defined?**

**UNE Section 2.2.9**

**DISPUTED LANGUAGE:**

APPENDIX UNE–  
**SBC13STATE**  
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**SBC-13STATE/CLEC**  
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- 2.2 **SBC-13STATE** will provide CLEC nondiscriminatory access to UNEs (Act, Section 251(c)(3), Act, and Section 271(c)(2)(B)(ii); 47 CFR Section 51.307(a)):

\* \* \* \* \*

2.2.9 *Only to the extent it has been determined by the FCC or Commission that these elements are required by the “necessary” and “impair” standards of the Act (Act, Section 251 (d)(2)). In the event that the FCC or Commission changes the list of required unbundled network elements, the parties shall comply with Section 4.0 of the General Terms and Conditions to make the necessary revisions to this Appendix.*

**ARGUMENT:**

Ameritech Illinois has attempted to include language that states that it is only required to provide a UNE after an affirmative order of the FCC or State Commission that the UNE meets the “necessary” and “impair” standards of the Act and FCC rules. While TDS Metrocom does not dispute that Ameritech Illinois is required to provide those UNEs that are within the definitions of the Act, there is nothing that requires that an affirmative order of the FCC or Commission be issued prior to a UNE being made available.

47 C.F.R 51.5 defines a Network Element as:

*Network element.* A "network element" is a facility or equipment used in the provision of a telecommunications service. Such term also includes, ***but is not limited to***, features, functions, and capabilities that are provided by means of such facility or equipment, ***including but not limited to***, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service. (Emphasis added)

47 C.F.R. 51.307 says:

(a) An incumbent LEC shall provide, to a requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of Sections 251 and 252 of the Act, and the Commission's rules.

There is no mention that only network elements that been called out by name shall be provided.

Paragraph 262 of the *Local Competition Order* states:

We conclude that the definition of the term "network element" broadly includes all "facilit[ies] or equipment used in the provision of a telecommunications service," and all "features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." This definition thus includes, ***but is not limited to***, transport trunks, call-related databases, software used in such databases, and all other

*unbundled elements that we identify in this proceeding.* The definition also includes information that incumbent LECs use to provide telecommunications services commercially, such as information required for pre-ordering, ordering, provisioning, billing, and maintenance and repair services. This interpretation of the definition of the term "network element" will serve to guide both the Commission and the states in evaluating further unbundling requirements beyond those we identify in this proceeding. (Emphasis added)

In short, while the FCC has adopted a "national list" of elements that must be unbundled, there is nothing that requires that a network element be the subject of an affirmative FCC or state commission order before it must be provided. On the contrary, the language cited above states the UNEs that must be offered "is not limited" to those "identif[ied] in this proceeding." This was reaffirmed by the FCC in the UNE Remand Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, (November 5, 1999), where the FCC stated: "We adopt our tentative conclusion to identify a **minimum** list of network elements that should be unbundled on a national basis."

One would not suppose that Ameritech Illinois would make the argument that it agreed that the element in question met all of the tests such as the "necessary and impair" test, but that it would delay providing the element until after the FCC issued a ruling that the element must be unbundled. As testified to by Staff witness Clausen (Staff Exhibit 1, Clausen Direct p. 342, lines 5-7), the

network element itself is not changed by an order requiring it to be unbundled. If the network element is found to meet the tests for unbundling, then it met the tests for unbundling prior to an order being issued.

If the element meets the definitions contained in the Act and the applicable rules, it must be unbundled and provided to CLECs. To allow otherwise would invite Ameritech Illinois to refuse to provide any new UNE, no matter how obvious it was that the new UNE met the tests under the Act and FCC rules, until a formal FCC or Commission order has been issued. This could significantly delay the introduction of new unbundled elements, all with no negative consequence to Ameritech Illinois for its actions. If the language proposed by Ameritech Illinois is not included, Ameritech Illinois would still have the opportunity to refuse to provide a new UNE, but it would do so knowing that it runs the risk of being found in violation of the agreement if its action is not justified.

The result proposed by TDS Metrocom is consistent with the result reached by the ICC in the SCC arbitration, Docket 00-0769. In that case the Commission ordered language that states that Ameritech is only required to provide UNEs "expressly set forth in this Agreement, or as required by the Federal Communications Commission or the Illinois Commerce Commission." (underline original). As noted above, the FCC sets out certain objective tests to determine if a network element must be unbundled, and expressly states that the network elements that must be unbundled are not limited to those in the list put forth by the FCC.

In fact, this agreement contains a Bona Fide Request process that is “to provide CLEC access to new, undefined UNE”. If the UNE has been the subject of an FCC order, it will hardly be undefined. Of course the deletion of the language proposed by Ameritech Illinois does not in itself require Ameritech Illinois to unbundle any particular element, or add to Ameritech Illinois’ obligations in any way. It will however remove an operational impediment to competition, by making it clear that Ameritech Illinois has a duty in good faith to unbundle those elements which meet the definition and requirements under the Act and the FCC rules, without waiting for an affirmative order naming the element.

If a UNE meets the tests under the Act and FCC rules, Ameritech Illinois is required to provide that UNE, regardless if a formal FCC order has been issued or not. The language proposed by Ameritech Illinois for this section should not be included in the agreement. For these reasons, TDS Metrocom asks that the language be deleted.

## Issue TDS-28

### Should Ameritech Illinois be required to provide UNEs where facilities modifications are required?

#### Appendix UNE Section 2.9.1

#### DISPUTED LANGUAGE:

APPENDIX UNE–

**SBC13STATE**

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#### 2.9 Provisioning/Maintenance of Unbundled Network Elements

2.9.1 Access to UNEs is provided under this Agreement over such routes, technologies, and facilities as **SBC-13STATE** may elect at its own discretion, provided that such routes, technologies and facilities are non-discriminatory with respect to the way SBC-13STATE provides services to its own end users, affiliates, or other carriers. **SBC-13STATE** will provide access to UNEs where technically feasible. *Where facilities and equipment are not available, **SBC-13STATE** shall not be required to provide UNEs. However, CLEC may request and, to the extent required by law, **SBC-13STATE** may agree to provide UNEs, through the Bona Fide Request (BFR) process.* Where facilities require modifications they will be handled under the facilities modification process in Accessible Letter CLEC AM00-153, and the stipulated modifications thereto as reflected in issues A/F of the Interlocutory Order issued by the Public Service Commission of Wisconsin on December 15, 2000 in Docket 6720-TI-160, or the properly implemented successor thereto. All of the UNEs provided for under this Agreement shall be presumed to be technically feasible within the SBC-13STATE exchange areas.

*2.9.1.1 Nothing contained in this Appendix is intended to contradict or supersede commitments made by Ameritech-Wisconsin in Accessible Letter CLEC AM00-153, or the modifications to those commitments as reflected in issues A/F of the Interlocutory Order issued by the Public Service Commission of Wisconsin on December 15, 2000 in Docket 6720-TI-160.*

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- 12.1 The Interoffice Transport (IOT) network element is defined as SBC-12STATE interoffice transmission facilities dedicated to a particular CLEC that provide telecommunications between Wire Centers owned by SBC-12STATE, or requesting CLEC, or between switches owned by SBC-12STATE or CLEC. IOT will be provided only where such facilities exist at the time of CLEC request or pursuant to the Facility Modification Process.

**ARGUMENT:**

TDS Metrocom does not agree entirely with the Ameritech Illinois proposed language since it makes no express reference to the point in the agreement where the facilities modification process applies. It is important that the agreement directly reference places where the facilities modification process will apply to the extent this can be done.

There can be no doubt that Ameritech Illinois has agreed to use the facilities modification process in the five state Ameritech region. Ameritech Illinois first put forth a facilities modification process through its TCNET website on September 27, 2000. This facilities modification process was attached to the second report of the ALJ in the Wisconsin OSS collaborative (Docket No. 6720-TI-160). During further proceedings in that matter, Ameritech issued an updated facilities modification process in its accessible letter no. CLEC AM00-153 dated October 27, 2000. This accessible letter was effective in all five Ameritech states. Finally, in a stipulation dated November 30, 2000, which was incorporated into the Interlocutory Order issued by the Public Service Commission of Wisconsin on December 15, 2000, Ameritech agreed to certain additional changes to its facilities modification process through the CLEC forum, and that those modifications

would be effective in all Ameritech states. Ameritech issued its most recent version of the FMOD process on May 14, 2001 by Accessible letter Number: **CLECAM01-140**. The language proposed by TDS Metrocom merely makes the agreed-to process a part of this agreement. The language originally proposed by Ameritech Illinois stating that it has "no obligation" cannot be reconciled with the obligations Ameritech Illinois has expressly undertaken.

Ameritech Illinois continues to object to including in this agreement specific references to the FMOD policy which was agreed to by Ameritech throughout all five states. The problem to be addressed here is the one specifically cited by TDS Metrocom witness Jackson in his testimony, the attempt by Ameritech Illinois to continually use the BFR process as a substitute for the normal provisioning process for individual loops or other UNEs. (TDS Exhibit 5, Jackson Direct p. 16, lines 9-12). Ameritech Illinois makes the statement, without support, that the FMOD policy somehow goes beyond the requirements of the Act. Ameritech Illinois has failed to provide any support in the record for this allegation, and in fact it shows up nowhere in the testimony, it appears only in questions by Ameritech Illinois' counsel. Without any support for this bald assertion, it is much more likely that the FMOD process does not in fact obligate Ameritech Illinois beyond the requirements of the Act, but rather is the process agreed to by Ameritech Illinois and the CLECs by which Ameritech Illinois might

finally begin to reach the minimum standards required by the Act and the rules of the FCC and this Commission for the provisioning of UNE loops.<sup>2</sup>

Further, whatever might have been the original genesis of the FMOD policy, Ameritech Illinois has clearly agreed to the FMOD policy in all states where it does business. There is no valid reason to exclude direct references to the FMOD from this agreement because, absent an interconnection agreement with a CLEC, there is no need for the FMOD policy, as there would be no request for UNEs which would require the modifications. The artificial disconnection between the OSS collaborative, the FMOD policy, and this agreement which Ameritech Illinois seeks to establish is clearly unsupportable. Each of these is interwoven with the other, and there is no valid reason not to specifically reference the FMOD policy within this agreement. This appears to have been the crucial error made by the Panel in the Wisconsin Arbitration. By accepting the argument that there should be some division between the FMOD policy and the Agreement, the Wisconsin Panel ignored the indisputable fact that these are inexorably linked.

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<sup>2</sup> **Federal Communications Commission** *In the matter of SBC Communications Inc. Apparent Liability for Forfeiture* File No. EB-00-IH-0432 **ORDER ON REVIEW Adopted:** May 24, 2001, **Released:** May 29, 2001

"In this order, we affirm the March 15, 2001 Order of Forfeiture issued by the Enforcement Bureau ("Bureau") finding SBC Communications, Inc. ("SBC") to have willfully and repeatedly violated certain of the conditions imposed when the Commission approved the merger application of Ameritech Corp. ("Ameritech") and SBC . . ." (footnote omitted)

**Federal Communications Commission** *In the Matter of SBC Communications Inc. Apparent Liability for Forfeiture* File No. EB-00-IH-0326a **ORDER OF FORFEITURE Adopted:** May 23, 2001, **Released:** May 24, 2001

"In this Forfeiture Order, we find that SBC Communications, Inc. (SBC) willfully and repeatedly violated section 51.321(h) of the Commission's rules, requiring incumbent local exchange carriers (ILECs) promptly to post notice of premises that have run out of collocation space . . ."

As stated above, without an interconnection agreement, there is no need for an FMOD process.

Further, the FCC rules clearly require that an ILEC must give a CLEC access to UNEs on the same basis as it does for itself and other CLECs. (47 C.F.R. 51.311(b)). If Ameritech Illinois received a request from an end user customer to provide service, and service to that customer required some modification to the existing loops in order to provide the service, Ameritech Illinois would provide the service, and would in fact be required to provide the service under its carrier of last resort obligations. However, Ameritech Illinois then argues that it would have no obligation under the Act or this agreement to make similar modifications if the end user were requesting service through auspices of a CLEC. Clearly this would be discriminatory treatment which would not be permitted under the Act.

For all of these reasons, it is clear that the artificial separation between the provisioning of UNE loops under the interconnection agreement, and the agreed-upon FMOD policy related to the very same provisioning of loops, cannot be maintained. The language proposed by TDS Metrocom should be awarded for this issue.

## **Issue TDS-30**

### **What limits should be put on TDS Metrocom's use of UNEs?**

#### **UNE Section 2.9.8**

#### **DISPUTED LANGUAGE:**

APPENDIX UNE–  
**SBC13STATE**  
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2.9.8 *Unbundled Network Elements may not be connected to or combined with **SBC-13STATE** access services or other **SBC-13STATE** tariffed service offerings with the exception of tariffed Collocation services where available.*

#### **ARGUMENT:**

TDS Metrocom proposes striking the language put forth by Ameritech Illinois because it is overly broad and would place improper limits on TDS Metrocom's use of UNEs. For example, since Ameritech Illinois has tariffs for UNEs, the Ameritech Illinois language stating that a UNE cannot be combined with any tariffed offering would imply that TDS Metrocom cannot combine a UNE that is in the agreement with one that was not listed in the agreement, but is provided for in the tariff.

Further, the language proposed by Ameritech Illinois is contrary to 47 C.F.R. 51.309(a), which provides that:

[a]n incumbent LEC shall not impose limitations, restrictions, or requirements on request for, or the use

of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.

Once again, Ameritech Illinois ignores the actual language of the agreement as disputed between the parties in order to make an unsupportable argument. The FCC has made a limitation that is designed to prevent UNE combinations from replacing tariffed access services. From the very narrow limitation in the FCC rules prohibiting "loop-transport UNE combinations with tariffed services," *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-183 (rel. June 2, 2000) ("*Supplemental Order Clarification*") Ameritech Illinois leaps to unsupportable language that provides that all combinations of all UNEs and all tariffed services must be outlawed. Despite Ameritech Illinois' disingenuous statement that it only wishes the agreement to match the FCC order, the FCC order is strictly limited to loop transport combinations. The language proposed by Ameritech Illinois states : "*Unbundled Network Elements may not be connected to or combined with SBC-13STATE access services or other SBC-13STATE tariffed service offerings . . .*". This goes far beyond the limited prohibition in the FCC rule.

In its decision on this matter, the Wisconsin Panel specifically discussed the Supplemental Order Clarification cited by the ICC in the Level 3 decision, noting that "the FCC lifted this constraint in circumstances where the requesting carrier uses

combinations of unbundled loop and transport network elements to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer." Based in part on that portion of the Supplemental Order Clarification, the Wisconsin Panel reached a different conclusion:

The Panel rejects Ameritech's proposed language. The Panel finds that the language is overly broad and would reach combinations in addition to those prohibited by the FCC in the Supplemental Order Clarification. In particular, the proposed language extends to combinations other than loop-transport combinations, and the proposed language fails to permit TDS to demonstrate that it will provide a significant amount of local exchange service over a given loop-transport combination.

(Award of the Wisconsin Arbitration Panel in Docket 05-MA-123, p.41.)

TDS Metrocom requests that the ICC reconsider its decision in the Level 3 Arbitration on this issue, and order that language proposed by Ameritech Illinois should not be inserted for this section.

## Issue TDS-32

### Should the agreement provide for processes related to ordering of UNEs as shown?

#### Appendix UNE Sections 2.11-2.18

#### DISPUTED LANGUAGE:

APPENDIX UNE–

SBC13STATE

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SBC-13STATE/CLEC

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- 2.11 TDS may order from SBC-Ameritech multiple individual Network Elements on a single order without the need to have TDS send an order for each such *Unbundled* Network Element if such *Unbundled* Network Elements are (i) for a single type of service, (ii) for a single location, and (iii) for the same account and TDS provides on the order the same detail as required when such *Unbundled* Network Elements are ordered individually.
- 2.12 SBC-Ameritech shall provide a Single Point of Contact ("SPOC") for purposes of problem resolution or escalation at each SBC-Ameritech ordering and provisioning center including but not limited to: 1) the Local Service Center "LSC"; and 2) the Local Operations Center "LOC; and 3) Hi-Cap center. Each SPOC shall be trained to answer questions and resolve problems in connection with the provisioning, repair and maintenance of *Unbundled* Network Elements. For each SPOC, TDS will be provided with telephone number and/or pager. SBC-Ameritech shall provide an up to date escalation list via account management or on SBC-Ameritech's CLEC Online website to be used when the SPOC is not responsive or unable to resolve the issue. Notice of any changes to the escalation list will be sent according to the notice provisions of this Agreement.
- 2.13 SBC-Ameritech will provide TDS with a Firm Order Confirmation (FOC) for each order in accordance with the intervals set out in the performance measures, Appendix PM. If SBC-Ameritech encounters a circumstance where it is aware that it cannot meet the above requirements, SBC-Ameritech must provide notice to TDS, including the expected FOC interval and the expected time until normal intervals will be restored. Ameritech must update this information as the situation changes. The FOC will be provided in accordance with OBF guidelines and will contain the must contain an enumeration of TDS' ordered Network Elements

features, options, physical Interconnection, quantity, and SBC-Ameritech commitment date for order completion ("Committed Due Date"), which Committed Due Date shall be established on a nondiscriminatory basis with respect to installation dates for comparable orders at such time. If FOCs are delayed, TDS will utilize the SPOC described in 2.12 for information and resolution. If TDS escalates one or more late FOCs, Ameritech's SPOC will resolve and provide FOCs for the orders within 12 hours.

- 2.14 SBC-Ameritech will provide TDS electronically, *via OSS*, with a completed order confirmation per order in accordance with the intervals set out in the performance measures, Appendix PM.
- 2.15 As soon as identified but no later than 24 hours after submission, Ameritech shall provide notification electronically of TDS orders that have been submitted incompletely or incorrectly and therefore cannot be processed. The notification shall list all corrections or changes that need to be made to make the order ready for processing.
- 2.16 If Ameritech's Committed Due Dates are in jeopardy of not being met due to facilities availability, Ameritech will comply with the Facilities Modifications process in Accessible Letter CLEC AM00-153, and the modifications thereto as reflected in issues A/F of the Interlocutory Order issued by the PSCW on December 15, 2000 in Docket 6720-TI-160 or the properly implemented successor thereto.
- 2.17 Except for orders covered by the facilities modification process as provided in Section 2.16, no later than 72 hours prior to the Committed Due Date, or as soon as identified, SBC-Ameritech shall provide notification electronically of any instances when Ameritech's Committed Due Dates are in jeopardy of not being met by SBC-Ameritech on any element or feature contained in any order for a *Unbundled* Network Element. Ameritech shall indicate its new Committed Due Date within 24 hours of the notice of jeopardy.
- 2.18 Testing will be as follows:
  - 2.18.1 Ameritech will conduct a dial tone/ANI test on the day of cut, as a matter of course. In addition, for those CLECs who desire, Ameritech will also conduct a dial tone/ANI test on DD-2. Ameritech recommends further collaboration to define the new routine process.
  - 2.18.2 Ameritech will not charge CLECs for dial tone/ANI testing if done on a routine basis on DD-2 and /or on the date of cut. In addition,

- Ameritech will provide a dial tone/ANI test on a separate date as requested by the CLEC, subject to applicable charges.
- 2.18.3 Ameritech will engage in further collaboration to address the timing of notice if a dial tone/ANI test fails on DD-2 due to a CLEC trouble. Subject to the outcome of the collaborative, Ameritech will provide to the CLECs notice of a failed dial tone/ANI test conducted on DD-2 no later than 4 business hours after such test or by 10 am on DD-1, whichever occurs first. In addition, Ameritech will discuss potential procedures in the event a failure is found during such dial tone/ANI test performed on DD-2. However, in any event if a dial tone/ANI test is conducted on DD-2 Ameritech will perform another dial tone/ANI test as a matter of course on the date of cutover.
- 2.18.4 Ameritech will provide CLECs with status updates every two hours until the order is completed for all hot cuts that fail at the time of the originally scheduled cutover. In the case where trouble is reported after order completion, status will be available via Electronic Bonded Trouble Administration (EBTA) on a real-time basis.
- 2.18.5 Ameritech will implement “flags” for desired frame due times for Coordinated Hot Cuts (CHC) consistent with industry guidelines, if and when such flags are included in such guidelines upon a request from a CLEC and consistent with its then current Change Management Policy (CMP).
- 2.18.6 Ameritech will test and implement a “non-coordinated” frame due time hot cut process. Ameritech will continue to collaborate to define methods and procedures necessary for such process. Such discussions will begin in early December and will be concluded within 30-60 days. At the conclusion of such discussions such parties will file a joint report advising the Commission of all resolved and unresolved issues.

### **ARGUMENT:**

This language for Sections 2.11 through 2.18 was derived from Schedule 9.5 – Provisioning of Network Elements of the TDS Metrocom and Ameritech first generation interconnection agreement in Wisconsin. (TDS Exhibit 1, Kaatz Direct p. 4, lines 2-4). These sections address operational detail, which is industry standard, to be placed in the interconnection agreement.

Section 2.11 as proposed by TDS Metrocom is a basic requirement that allows TDS Metrocom to order several individual Network Elements on a single order without the need to send an order for each such Unbundled Network Element if such Unbundled Network Elements are: (i) for a single type of service, (ii) for a single location, and (iii) for the same account and TDS Metrocom provides on the order the same detail as required when such Unbundled Network Elements are ordered individually. As with other issues related to ordering, anything that minimizes the number of documents flowing between the parties will reduce costs and save time. It appears that the only remaining issue here is whether the term Network Elements should be modified by the word "Unbundled." The sole justification for this advanced by Ameritech Illinois was that the appendix in which this section is found is call Unbundled Network Elements. Ameritech Illinois does have certain obligations to provide combined UNEs (Tr. V1., p 226, line 2-8), thus the term Network Elements as used by TDS Metrocom is more appropriate.

Section 2.12 is the provision that requires Ameritech Illinois to provide a Single Point of Contact (SPOC) for purposes of problem resolution or escalation at *each* ordering and provisioning center. In the parties' first generation interconnection agreement in Wisconsin, a SPOC was not allocated for the Hi Cap Center and this among other things, resulted in TDS Metrocom's filing a complaint against Ameritech Wisconsin for lack of response to escalations with

respect to orders in the Hi Cap Center. (PSC of Wisconsin Docket No. 05-TD-101).

TDS Metrocom has had problems in the past with Ameritech's Hi Cap provisioning center (TDS Exhibit 1, Kaatz Direct p. 8, lines 17-19), and does not accept lack of staffing as a valid excuse for failing to provide a SPOC. If Ameritech Illinois were to be released of their obligations every time they claimed they had staffing issues, there would never be competition in Illinois. Without the allocation of a SPOC for *each* ordering and provisioning center by Ameritech Illinois, TDS Metrocom would have difficulty resolving problems for customers in an efficient and timely manner. If Ameritech Illinois sees the value of SPOCs at the LSC and the LOC, they cannot deny their value at the Hi Cap center. This is a process that is required so that Ameritech Illinois will live up to its obligations to timely and accurately provision Hi-Cap orders. It is certainly within this Commission's authority to order Ameritech Illinois to undertake such specific process steps that are required for Ameritech Illinois to fulfill its obligations under the Act.

Section 2.13 as proposed by TDS Metrocom references the performance measures as agreed upon by the parties but does not contradict them. TDS Metrocom is not trying to change the performance measures, but does require that this section of the agreement contain specific references which incorporate those performance measures already agreed to by the parties. Ameritech Illinois in its testimony did not provide any reason to oppose this section.

Section 2.13 also is critical to TDS Metrocom's business because it addresses the most essential piece of communication between Ameritech Illinois and TDS Metrocom – the Firm Order Confirmation. (TDS Exhibit 1, Kaatz Direct p. 9, lines 18-20). Ameritech Illinois is required to provide a Firm Order Confirmation (FOC) for each order in accordance with the intervals set out in the performance measures. This FOC should include, but not be limited to, a committed due date for customer unbundled network element (UNE) delivery. TDS Metrocom then communicates this committed due date to its end-user so scheduling can begin before the conversion. (TDS Exhibit 1, Kaatz Direct p. 10, lines 3-4). Without this provision in the contract, Ameritech Illinois could simply not provide this vital communication in a timely manner and thus significantly disrupt TDS Metrocom's business and ability to compete. Furthermore, the FOC is currently provided to all CLECs for orders today so there is no reason it should be excluded from this Interconnection Agreement. TDS Metrocom is not attempting to change the timing or content of FOCs as already agreed upon and specified in the OSS Collaboratives and per industry standards (TDS Exhibit 1, Kaatz Direct p. 10, lines 13-14), but TDS Metrocom simply wants these basic operational standards in the Interconnection Agreement. As with all of the other portions of the agreement related to this issue, Ameritech Illinois has provided no testimony that identifies any way in which the language requested by TDS Metrocom is contrary to or violates the results of the OSS collaborative.

Section 2.14 relates to the method in which Ameritech Illinois communicates confirmation that the TDS Metrocom ordered UNE has been completed per the intervals set forth in the performance measures. It is important because without notice that the order was complete, TDS Metrocom would have to call Ameritech Illinois for each order to determine if Ameritech Illinois' portion of the work was complete. (TDS Exhibit 1, Kaatz Direct p. 10, lines 18-21). There is no reason why this provision should be excluded from the Interconnection Agreement as Ameritech Illinois provides this notification today and should continue to provide it in the future. (TDS Exhibit 1, Kaatz Direct p. 11, lines 1-3).

Section 2.15 requires Ameritech Illinois to return or acknowledge, within 24-hours, TDS Metrocom orders that have been incorrectly or incompletely ordered and therefore are unable to be processed. The acknowledgement also lists all changes that need to be made to correct the order. This again is a fundamental piece of information that Ameritech Illinois provides to CLECs today and should continue to provide in the future. Without this provision in the Interconnection Agreement, Ameritech Illinois could simply stop providing notice to TDS Metrocom of incorrect orders, leaving TDS Metrocom to guess as to whether any particular order could not be fulfilled. These orders could sit unfilled until TDS Metrocom inquired about their status, which could significantly delay the ordering process. If TDS Metrocom is notified of the problem promptly, it can correct and resubmit the order without adversely affecting TDS Metrocom business processes.

TDS Metrocom also provides language which requires that the notice must list all problems in the order of which Ameritech Illinois is aware. In the past, TDS Metrocom has had orders which contain more than one problem, but which when returned only give TDS Metrocom notice of a single deficiency in the order. TDS Metrocom would proceed to correct the one issue identified, only to have the order rejected again, this time noting an entirely different problem. (TDS Exhibit 1, Kaatz Direct p. 12, lines 4-9). This type of anti-competitive guessing game would be prohibited by this provision.

Sections 2.16 and 2.17 as proposed by TDS Metrocom relate to the Facility Modification Process (FMOD) that was promulgated by Ameritech and agreed to by Ameritech for its five state region. Sections 2.16 and 2.17 are simply provisions that require Ameritech Illinois to: 1) follow the currently published Facility Modification Process (FMOD) when previously committed due dates are in jeopardy of being missed, and 2) provide electronic notification when a committed due date is in jeopardy for orders that do not fall into the FMOD process. This includes providing a new committed due date within 24-hours after the jeopardy notice. Both sections reference the FMOD process and are neither duplicative nor the creation of new FMOD procedures.

Sections 2.16 and 2.17 are based on the existing operational processes and standards that were in the first interconnection agreement and which accurately reflect how the parties do business today. (TDS Exhibit 1, Kaatz Direct p. 13, lines 9-11).

Section 2.18 merely provides language that implements the testing procedures that Ameritech agreed to in the OSS collaborative in Wisconsin, and that TDS Metrocom understood to be the procedures that would be followed throughout the five state Ameritech region. The proposed language is word-for-word the language that Ameritech Illinois agreed to. Ameritech's witness Silver admitted that the language was entirely consistent with the provisions in the Illinois OSS as well.

While Sections 2.11 through 2.18 appear basic in nature, they are critical to TDS Metrocom to set forth definitions, standards and processes that are used by the parties when ordering UNEs. TDS Metrocom has testified that the lack of these provisions would greatly affect TDS Metrocom's ability to compete in Illinois. (TDS Exhibit 1, Kaatz Direct p. 5, lines 18-19).

Ameritech's opposition to these sections can be summed up as follows:

- a. These sections involve, generally, the topic of OSS
- b. There was an OSS collaborative and generic proceeding
- c. Therefore anything that touches, no matter how remotely, on the subject of OSS has been 100% preempted by the collaborative, and cannot be addressed in any Interconnection Agreement.

This line of argument completely ignores the fact that the Act and the FCC rules explicitly require individual negotiation between CLECs and ILECs. The fact that one CLEC might have different terms and conditions in its agreement is a very specific and important part of the Act and the FCC rules. One must assume

that the Congress and the FCC know how the tariff process works, and if the intent was to have absolutely identical terms between the ILEC on one hand and all CLECs on the other, Sections 251 and 252 of the Act would look quite different today.

Ameritech Illinois might have had a valid point if the terms proposed by TDS Metrocom contradicted the results or orders in the OSS collaborative. The facts established in the record do not show that any of these issues were even directly addressed in the OSS collaborative (Docket No. 00-0592). The Ameritech witness did not specify any part of any language requested by TDS Metrocom which is contrary to any result of the OSS collaborative. (Tr. p. 229, line 22).

This leads us to the apparent Ameritech Illinois "fall back" position: that the issues "could have been raised" in the OSS collaborative, and therefore they cannot be included in the agreement. The fallacy of this argument is immediately obvious. The OSS proceedings in the various Ameritech states were generic proceedings that are not intended to produce a complete interconnection agreement in all detail. To say that any topic or issue that "could have been raised" in the generic proceeding is barred from the interconnection agreement ignores the Act and the FCC rules. EVERY issue "could have" been raised in the OSS collaborative. Ameritech itself could have raised all of the issues in the

language that it proposed as Appendix OSS in the collaborative<sup>3</sup>. In fact, since these negotiations, at least on a multistate basis, have been going on for over a year, Ameritech "could have raised" the issue of, for example, the language that Ameritech wishes to impose for Section 3.2.1 of Appendix OSS (*See*: issue TDS-123) This issue involves OSS and is language that is proposed by Ameritech Illinois which is not agreed to by TDS Metrocom. Ameritech "could have" raised that as an issue in the OSS proceeding, but under the reasoning advocated by Ameritech Illinois here, would be barred from arguing that the language should be included in the agreement. Clearly a ruling that any issue that "could have been raised" in a generic proceeding cannot be a term of any interconnection agreement would be contrary to the Act and FCC rules, which require separate negotiation with each CLEC that requests interconnection.

There has been no showing that any of the language proposed by TDS Metrocom is contrary to any part of the results of the Illinois OSS collaborative, and thus these are absolutely appropriate for inclusion in the interconnection agreement. Further, TDS Metrocom has provided testimony that stands essentially un rebutted, and which establishes the importance of these processes and procedures to the provisioning of unbundled network elements.

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<sup>3</sup> It must be remembered that the language of that appendix, and in fact nearly all of the language that was the starting point of negotiations, was language proposed by Ameritech, and to which TDS Metrocom had no duty to agree, nor any burden to refute, unless and until Ameritech convinced this Commission to order it as part of this arbitration. Ameritech seems to take the position that the 13-STATE agreement is some sort of default language, that the parties, and the various state commissions MUST apply unless the CLEC overcomes some burden of proof known only to Ameritech.

For all these reasons, the Commission should award the language requested by TDS Metrocom for Sections 2.11 through 2.18.

**Issues TDS-33 through TDS-40**

**Should Ameritech Illinois be required to offer adjacent location access to UNEs in Illinois as it does in California?**

**UNE Article 4 and Collocation Sections 2.2 and 10.9**

**DISPUTED LANGUAGE:**

APPENDIX UNE–  
**SBC13STATE**  
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**SBC-13STATE/CLEC**  
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**4. ADJACENT LOCATION**

*\*Available only in the State of California. Refer to INTERCONNECTION AGREEMENT: GENERAL TERMS AND CONDITIONS Paragraph 26.1. (Foot note by Ameritech in agreement.)*

***NOTE: THE ENTIRE SECTION 4 IS SHOWN IN UNDERLINE FORMAT BECAUSE IT IS AMERITECH-ILLINOIS'S POSITION THAT SECTION 4 SHOULD NOT BE INCLUDED IN THIS APPENDIX. HOWEVER, IN THE EVENT THAT THE PANEL DETERMINES THAT SECTION 4 SHOULD BE INCLUDED, THEN IT SHOULD BE INCLUDED JUST AS IT APPEARS IN THE CALIFORNIA AGREEMENT(S) ON WHICH TDS RELIES FOR THE PROPOSITION THAT IT SHOULD BE INCLUDED. AS A RESULT, THE FOLLOWING ADDITIONAL CONVENTIONS HAVE BEEN USED FOR SECTION 4: ITALICS REPRESENT CALIFORNIA LANGUAGE THAT TDS SEEKS TO EXCLUDE, WHILE BRACKETS { } SURROUND NEW LANGUAGE THAT TDS HAS PROPOSED AND THAT DIFFERS FROM THE CALIFORNIA LANGUAGE***

- 4.1 This Section describes the Adjacent Location Method for accessing UNEs. This Section also provides the conditions in which SBC-13STATE offers the Adjacent Location Method.**
- 4.2 The Adjacent Location Method allows a CLEC to access loops, switch ports, and dedicated transport for a CLEC location adjacent to a SBC-13STATE Central Office as identified by SBC-13STATE. Under this method SBC-13STATE UNEs will be extended to the adjacent location, via {various methods, including but not limited to} copper{, coax, or fiber} cabling provided by the CLEC, which the CLEC can then utilize to provide Telecommunications Service.**
- 4.3 This method requires the CLEC to provide copper cable, greater than 600 pairs, to the last manhole outside the PACIFIC Central Office. The CLEC shall provide enough slack for PACIFIC to pull the cable into the Central**

*Office and terminate the cable on the Central Office Intermediate Distribution Frame (IDF).*

4.4 The CLEC will obtain all necessary rights of way, easements, and other third party permissions.

4.5 The following terms and conditions apply when **SBC-13STATE** provides the adjacent location:

4.5.1 The CLEC is responsible for Spectrum Interference and is aware that not all pairs may be ADSL or POTS capable {to the extent caused directly by the cable provided by CLEC to the Adjacent Location}.

4.6 The installation interval applies on an individual application basis. The CLEC is responsible for paying all up front charges (nonrecurring and case preparation costs) before work will begin. This assumes that all necessary permits will be issued in a timely manner{Payment shall be 50% up front , 40% at 90% completion, and 10% upon acceptance by CLEC}..

4.7 The CLEC will provide the excess cable length necessary to reach the **SBC-13STATE** IDF {or other point of termination} in the **SBC-13STATE** Central Office where CLEC requests connection.

4.8 The CLEC will be responsible for testing and sectionalization of facilities from the customer's location to the entrance manhole.

4.9 The CLEC should refer any sectionalized trouble determined to be in **SBC-13STATE**'s facilities to **SBC-13STATE**.

4.10 The CLEC's employees, agents and contractors will be permitted to have access to the CLEC's cable where it is delivered to **SBC-13STATE** (outside the entrance manhole). The CLEC is only able to enter the entrance manhole to splice under a duct lease agreement. If the CLEC leases ducts to get to the Central Office then CLEC has the right to splice the manholes on the route, including the entrance manhole.

4.11 In order for **SBC-13STATE** to identify the entrance manhole for the CLEC, the CLEC must specify the direction from which the cable originates. **SBC-13STATE** will verify that a vacant sleeve or riser duct exists at the entrance manhole. If none exists, construction of one will be required. If a vacant access sleeve or riser duct does not exist, and one must be constructed, the CLEC will pay for the construction on an Outside Plant Custom Work Order.

- 4.12 The CLEC will retain all assignment control. **SBC-13STATE** will maintain TIRKS records for cable appearance information on the horizontal and vertical appearance on the **SBC-13STATE** frame.
- 4.13 The CLEC will pay Time and Materials charges when **SBC-13STATE** dispatches personnel and failure is in the CLEC's facility.
- 4.14 **SBC-13STATE** will not assume responsibility for the quality of service provided over this special interconnection arrangement. Service quality is the responsibility of the CLEC. **SBC-13STATE** limits each CLEC to two building entrances {for each of the following interconnection methods, copper, coax and fiber}. Two entrances {for each method} allow{s} for CLEC growth or a diverse path.
- 4.16 Prior to **SBC-13STATE** providing the Adjacent Location Method in this Appendix, the CLEC and **SBC-13STATE** shall provide each other with a single point of contact for overall coordination.
- 4.17 The Adjacent Location Method of Accessing UNEs allows for *only* copper{, coax and fiber cable termination}.
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- 2.2 “Adjacent Structure” is a Collocator provided structure placed on **SBC-13STATE** property adjacent to an Eligible Structure, or a structure placed or leased near an SBC-13STATE Eligible Structure. This arrangement is only permitted when space is legitimately exhausted inside the Eligible Structure and to the extent technically feasible.

10.9 Adjacent Structure Collocation Delivery Intervals

- 10.9.1 **SBC-13STATE** Delivery Interval, rates, terms and conditions for Adjacent Structures Collocation will be determined on an individual case basis (ICB)/Non Standard Collocation Request (NSCR) where such structures are placed on SBC-13STATE property.

**ARGUMENT:**

This method is already being offered by Ameritech in Michigan<sup>4</sup> as well as by Ameritech's affiliates in California and Texas<sup>5</sup>. The tariff in Texas in particular was voluntarily agreed to by Ameritech Illinois' parent company and has not been challenged or appealed by SBC. This creates a strong presumption that it should be made available in Illinois as well.

Based on the record, we now conclude that the deployment by any incumbent LEC of a collocation arrangement gives rise to a rebuttable presumption in

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<sup>4</sup> See Ameritech Michigan Tariff No. 20, Part 23, Section 4, Second revised sheet Nos. 7 and 8. Ameritech has appealed from the Michigan Public Service Commission order related to this tariff, but as of the time of this brief, the tariff is in effect in Michigan.

<sup>5</sup> See Southwestern Bell Telephone Company LOCAL ACCESS SERVICE TARIFF Section: 5.

favor of a competitive LEC seeking collocation in any incumbent LEC premises that such an arrangement is technically feasible. Such a presumption of technical feasibility, we find, will encourage all LECs to explore a wide variety of collocation arrangements and to make such arrangements available in a reasonable and timely fashion. We believe this "best practices" approach will promote competition. Thus, for example, a competitive LEC seeking collocation from an incumbent LEC in New York may, pursuant to this rule, request a collocation arrangement that is made available to competitors by a different incumbent LEC in Texas, and the burden rests with the New York incumbent LEC to prove that the Texas arrangement is not technically feasible. The incumbent LEC refusing to provide such a collocation arrangement, or an equally cost-effective arrangement, may only do so if it rebuts the presumption before the state commission that the particular premises in question cannot support the arrangement because of either technical reasons or lack of space.

*In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order (F.C.C. rel. 3/31/99) ("ASO") para 45.*

Since it is clear that the Adjacent Method should be available, the only determinations remaining are the terms under which the method should be provided. The starting point for the language proposed by TDS Metrocom is Ameritech's own language from the 13-STATE agreement. All of the changes to the language for the adjacent method are changes by TDS Metrocom to make the method more efficient, for example by allowing access by fiber or by less than 600 pair cable, or to make the method operate the same as adjacent collocation. Each of the individual modifications are more fully discussed in Mr. Lawson's

testimony. (TDS Exhibit 3, Lawson Direct p. 7, lines 9-22). Ameritech Illinois seems to have painted itself into a corner here. It argues that if the adjacent method is to be adopted, it should be adopted exactly as it was ordered in California. Ameritech Illinois then turns around and says that adjacent location method cannot be used because it is too inefficient. What Ameritech Illinois has failed to explain is why, if the primary argument against using the adjacent method is that it is too inefficient, it has resisted all attempts to modify the process to make it more efficient.

As testified to by Mr. Lawson, the only difference between adjacent method of accessing UNEs and adjacent collocation, is that the equipment of the CLEC is not physically on the ILEC's property, and thus the cables or fiber may be slightly longer. (TDS Exhibit 3, Lawson Direct p. 6, lines 17-20). Since Ameritech Illinois is not required by this language to procure the space for TDS Metrocom to place its equipment, there is no valid reason for Ameritech Illinois to deny this type of access to UNEs when more traditional means of collocation are not available. Therefore, TDS Metrocom requests that the language proposed by TDS Metrocom be awarded for this issue.

## Issue TDS-41

### What is the appropriate scope of the Bona Fide Request process?

#### UNE Section 5.2.1

#### DISPUTED LANGUAGE:

APPENDIX UNE–  
**SBC13STATE**  
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#### 5.2 *ITEM I* **SBC-AMERITECH,** *Bona Fide Request Process*

5.2.1 *A Bona Fide Request (“BFR”) is the process by which CLEC may request **SBC-AMERITECH** to provide CLEC access to new, undefined UNE, (a “Request”), that is required to be provided by **SBC- SBC-AMERITECH** under the Act but is not available under this Agreement or defined in a generic appendix at the time of CLEC’s request. The BFR process will not be used for currently defined UNEs so long as CLEC does not request shorter provisioning intervals. Currently defined UNEs where CLEC does not request shorter provisioning intervals will be handled by the Facilities Modifications process in Accessible Letter CLEC AM00-153, and the modifications thereto as reflected in issues A/F of the Interlocutory Order issued by the PSCW on December 15, 2000 in Docket 6720-TI-160 or the properly implemented successor thereto.*

#### ARGUMENT:

Note that TDS Metrocom has not deleted or changed any of the Ameritech Illinois language in this section. The language TDS Metrocom has added is entirely consistent with the language originally proposed by Ameritech Illinois

which states: "A Bona Fide Request ("BFR") is the process by which CLEC may request SBC-AMERITECH to provide CLEC access to *new, undefined UNE . . .*" (Emphasis Added). As provided in this language, TDS Metrocom asserts that the Bona Fide Request process is limited to new UNEs that are not currently defined, and does not apply to defined UNEs that Ameritech Illinois asserts require non-standard provisioning. Currently defined UNEs should be subject to the facilities modification process. The FMOD process, as originally set out in Accessible Letter CLEC AM00-153 explicitly provides:

SBC will make modifications and engage in construction to provision UNEs according to the following categories.

1. Simple Modifications
2. Complex Modifications
3. Integrated Digital Loop Carrier (IDLC)/Remote Switching Units(RSU)
4. New Build

Ameritech Illinois has asserted that TDS Metrocom is trying to avoid the costs and delays of the BFR process, and this is essentially correct, with one clarification: TDS Metrocom is seeking to avoid unnecessary delays and unnecessary costs that are incurred by invoking the BFR process inappropriately. TDS Metrocom merely is clarifying that the FMOD policy should be invoked in those instances where the FMOD policy was designed to be applicable, including complex modifications and new build situations.

The language TDS Metrocom requests simply verifies the fact that Ameritech Illinois cannot impose the BFR policy to deal with individual order processing and ensures that the BFR is used in its originally intended context,

which is the definition of new UNEs. Further, in this issue, as with other issues, TDS Metrocom is requesting that the agreements made by Ameritech Illinois within the OSS collaboratives be incorporated in the agreement.

As testified to by TDS Metrocom witness Jackson, Ameritech Illinois has in the past attempted to use the BFR process to substitute for the normal provisioning process for loops which serves to unnecessarily increase expense and delay in provisioning of those loops. (TDS Exhibit 5, Jackson Direct p. 16, lines 9-12). All TDS Metrocom has attempted to do by the language it has proposed here is to limit the BFR process to its proper scope, that of defining and providing new “undefined” UNEs. The Commission should award the language proposed by TDS Metrocom for this section.

## Issue TDS-66

### Should Ameritech Illinois be allowed to exercise control over the design, construction and placement of adjacent structures?

#### Collocation Section 4.1.4.1

#### DISPUTED LANGUAGE:

APPENDIX COLLOCATION - **SBC-13STATE**

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- 4.1.4.1 When space is legitimately exhausted inside an **SBC-13STATE** Eligible Structure, **SBC-13STATE** will permit CLEC to physically collocate in an Adjacent Structure (e.g. controlled environmental vaults, controlled environmental huts, or similar structures such as those used by **SBC-13STATE** to house telecommunications equipment) to the extent technically feasible. **SBC-13STATE** will permit CLEC to construct or otherwise procure such adjacent structure, subject to reasonable safety and maintenance requirements, zoning and other state and local regulations, *and **SBC-13STATE**'s right to exercise reasonable control over the design, construction, and placement of such Adjacent Structures.* **SBC-13STATE** will allow the CLEC to provide equipment installed within the Adjacent Structure subject to all the requirements set forth in this Appendix. CLEC will be responsible for securing the required licenses and permits, the required site preparations, and will retain responsibility for building and site maintenance associated with placing the Adjacent Structure. **SBC-13STATE** may reserve reasonable amounts of space adjacent to its Eligible Structure needed to expand its Eligible Structure to meet building growth requirements, provided that such reservation shall be administered on a non-discriminatory basis. . **SBC-13STATE** will assign the location of the Designated Space where the Adjacent Structure will be placed.

**ARGUMENT:**

The FCC's Advanced Services Order provides only that an ILEC "may" have a legitimate reason to exercise control over design and construction of an adjacent structure.

Because zoning and other state and local regulations may affect the viability of adjacent collocation, and because the incumbent LEC *may have* a legitimate reason to exercise some measure of control over design or construction parameters, *we rely on state commissions to address such issues. In general, however, the incumbent LEC must permit the new entrant to construct or otherwise procure such an adjacent structure, subject only to reasonable safety and maintenance requirements.*" (Emphasis added)

During the negotiation process TDS Metrocom has never been advised by Ameritech Illinois of any specific facts that would justify such control in any particular case. Ameritech Illinois provided absolutely no evidence in this record to show exactly what type of "control" it wishes to exercise. The examples cited by Ameritech counsel during cross examination (Tr. p. 116, lines 1-8; p. 117, lines 2-5; 14-19 and 21-22; p. 118, lines 1-7) are already covered by the provisions requiring compliance with reasonable safety requirements and the provision allowing Ameritech control over the exact site of the adjacent structure. Ameritech Illinois has certainly never provided any showing that such control is needed on the open-ended basis that the Ameritech Illinois proposed language would provide. The language of the Advanced Services Order states that an ILEC

*may* have a legitimate reason to impose some restrictions on the design and engineering of an adjacent structure, but that it is the ILECs burden to prove those concerns to a state commission before it is allowed to interfere with the CLECs design. TDS Metrocom has placed evidence in the record by the testimony of Mr. Lawson (TDS Exhibit 3, Lawson Direct p. 15, lines 21-22), from Ameritech Illinois' own documents, where Ameritech Illinois states that it will not exercise control over the structures. This is very persuasive evidence that Ameritech Illinois must not have any legitimate concerns. Further, the Panel in the Wisconsin arbitration awarded this issue to TDS Metrocom, and it was not part of the Comments filed by Ameritech in response to the Award. This state commission, when addressing this issue should find that Ameritech Illinois has not demonstrated any legitimate concerns, and thus should find for TDS Metrocom on this issue.

## Issue TDS-78

### What provisions concerning the type of equipment that can be collocated should be included in the agreement?

#### Collocation Sections 6.1 to 6.8

#### DISPUTED LANGUAGE:

APPENDIX COLLOCATION - **SBC-13STATE**  
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#### 6. ELIGIBLE EQUIPMENT FOR COLLOCATION

- 6.1 In accordance with Section 251(c)(6) of the Telecommunications Act, CLEC may collocate equipment "necessary for interconnection or access to unbundled network elements." For purposes of this section, "necessary" *means directly related to and thus necessary, required, or indispensable to interconnection or access to unbundled network elements. Such uses are limited to interconnection to the **SBC-13STATE's** network "for the transmission and routing of telephone exchange service or exchange access," or for access to **SBC-13STATE's** unbundled network elements "for the provision of a telecommunications service."* Equipment that may be collocated solely for these purposes includes: (1) transmission equipment including, but not limited to, optical terminating equipment and multiplexers; and (2) equipment being collocated to terminate basic transmission facilities pursuant to sections 64.1401 and 64.1402 of 47 C.F.R. (Expanded Interconnection) as of August 1, 1996. shall be as defined by the FCC or the Commission.
- 6.2 *Multifunctional Equipment is not "necessary" for interconnection or access to unbundled network elements. CLEC may not collocate Multifunctional Equipment except as expressly and specifically allowed, on a voluntary basis, in this Section or mutually agreed to by **SBC-13STATE** and CLEC. For purposes of this section, "Multifunctional Equipment," means equipment that has both (1) functions that make the equipment "necessary for interconnection or access to unbundled network elements" and (2) additional functions that are not "necessary" for these purposes. Such additional functions include, but are not limited to, switching and enhanced service functions.*
- 6.3 **SBC-13STATE** permits CLEC collocation, on a non-discriminatory basis, of complete pieces or units of equipment specified in the definition of "Advanced Services Equipment" in section 1.3.d of the SBC/Ameritech Merger Conditions. *To the extent that certain complete units of Advanced Services Equipment are not "necessary" for interconnection or access to unbundled network elements because they are Multifunctional Equipment and for other reasons, SBC-13State voluntarily allows such CLEC collocation. Under the SBC/Ameritech Merger Conditions, "Advanced Services Equipment" is defined as, and limited to, the following*

*equipment: "(1) DSLAMs or functionally equivalent equipment; (2) spectrum splitters that are used solely in the provision of Advanced Services; (3) packet switches and multiplexers such as ATMs and Frame Relay engines used to provide Advanced Services; (4) modems used in the provision of packetized data; and (5) DACS frames used only in the provision of Advanced Services. Spectrum splitters (or the equivalent functionality) used to separate the voice grade channel from the Advanced Services channel shall not be considered Advanced Services Equipment; any such splitters installed after the Merger Closing Date that are located at the customer premises shall be considered network terminating equipment." To qualify for collocation, the complete units of Advanced Services Equipment must either (A) be solely of the types, and exclusively for the uses, included in this definition or (B) be of such types, and for such uses, combined solely with additional functions that are "necessary for interconnection or access to unbundled network elements." For instance, additional switching use, except as included below, or enhanced services functionality would disqualify the equipment from collocation. CLEC may collocate Optical Concentrator Devices ("OCDs") or functionally equivalent equipment used to provide Advanced Services.*

- 6.4 *To qualify for collocation, the equipment must be a complete piece, unit, or item of such equipment, not a piece-part or sub-component (such as a line card) of a complete unit of equipment. CLEC may not collocate, or place into **SBC-13STATES** equipment, CLEC's equipment sub-components or piece-parts.*
  
- 6.5 ***SBC-13STATE** does not allow collocation of other Multifunctional Equipment, except that SBC-13STATE voluntarily allows CLEC collocation, on a non-discriminatory basis, of remote switch modules ("RSMs") solely under the following conditions: (1) the RSM may not be used as a stand-alone switch; the RSM must report back to and be controlled by a CLEC identified and controlled (i.e., CLEC owned or leased) host switch, and direct trunking to the RSM will not be permitted, and (2) the RSM must be used only for the purpose of interconnection with the SBC-13STATE's network for the transmission and routing of telephone exchange service or exchange access or for access to the SBC-13STATE's unbundled network elements for the provision of a telecommunications service. SBC-13STATE voluntarily will allow CLEC to collocate, on a non-discriminatory basis, other multifunctional equipment only if SBC-13STATE and CLEC mutually agree to such collocation.*
  
- 6.6 ***SBC-13STATE** will not allow collocation of stand-alone switching equipment, equipment used solely for switching, or any enhanced services equipment. For purposes of this section, "stand-alone" is defined as any equipment that can perform switching independently of other switches or switching systems. "Stand-alone switching equipment" includes, but is not limited to, the following examples: (1) equipment with switching capabilities included in 47 C.F.R. section 51.319(c); (2) equipment that is used to obtain circuit switching capabilities, without reliance upon a host switch, regardless of other functionality that also may be combined in the equipment; (3) equipment that is used solely, fundamentally, or predominately for switching and does not meet any of the above-described categories of equipment that **SBC-13STATE** voluntarily allows to be collocated; and (4) equipment with the functionality of a class 4 or 5 switch including, without limitation, the following: Lucent Pathstar, 5E, 4E, or 1A switch; DMS 10, 100, 200, or 250 switch; Ericsson*

AXE-10 switch; Siemens EWSD; and any such switch combined with other functionality.

- 6.7 *Ancillary equipment is not "necessary" for interconnection or access to unbundled network elements. **SBC-13STATE** voluntarily allows CLECs to place in **SBC-13STATE** Eligible Structure certain ancillary equipment solely to support and be used with equipment that the CLEC has legitimately collocated in the same premises. Solely for this purpose, cross-connect and other simple frames, routers, portable test equipment, equipment racks and bays, cabinets for spares, and potential other ancillary equipment may be placed in **SBC-13STATE's** premises, on a non-discriminatory basis, only if **SBC-13STATE** and CLEC mutually agree to such placement. CLEC may not place in **SBC-13STATE** premises ancillary equipment that would duplicate equipment used by **SBC-13STATE**, and/or functions performed by **SBC-13STATE**, as part of its provision of infrastructure systems for collocation. Such placement would waste space and other resources and, in at least some cases, harm **SBC-13STATE's** ability to plan for and provide service to other customers including, but not limited to, other CLECs.*
- 6.8 *Pending the FCC's reasonably timely remand proceedings in accordance with the Court's Opinion in GTE Service Corporation v. FCC, 205 F.3d 416 (D.C. Cir. 2000) ("GTE Opinion"), **SBC-13STATE** voluntarily will not disturb (1) equipment and (2) connection arrangements between different collocators' equipment in an **SBC-13STATE** premises, that prior to the May 11, 2000 effective date of the GTE Opinion (1) were in place in **SBC-13STATES** or (2) were requested by CLEC and accepted by **SBC-13STATE** on the same basis as under the FCC's original, pre-partially-vacated Collocation Order (Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order (FCC 99-48), 14 FCC Rcd 4761 (1999)). **SBC-13STATE's** agreement not to disturb these collocation arrangements pending timely completion of the remand proceedings will immediately expire if a federal or state court or regulatory agency (1) attempts to apply any of the most favored nation provisions of the Act, of any state Merger Conditions, or of the FCC SBC/Ameritech Merger Conditions to such arrangements or (2) deems such arrangements to be discriminatory vis-à-vis other carriers.*

## **ARGUMENT:**

Ameritech Illinois has proposed a lengthy list of provisions which attempt to limit the types of equipment TDS Metrocom can collocate. Ameritech Illinois states that its language is consistent with the rules of the FCC and cites specifically to 47 C.F.R 51.323(b)(1)&(2) and (c). The entire text of these sections is set out below:

[Equipment used for interconnection or access to unbundled network elements includes, but is not limited to]:

(1) Transmission equipment including, but not limited to, optical terminating equipment and multiplexers, and

(2) Equipment being collocated to terminate basic transmission facilities pursuant to §§ 66.1401 and 64.1402 of this chapter as of August 1, 1996.

(c) Nothing in this section requires an incumbent LEC to permit collocation of equipment used solely for switching or solely to provide enhanced services; provided, however, that an incumbent LEC may not place any limitations on the ability of requesting carriers to use all the features, functions, and capabilities of equipment collocated pursuant to paragraph (b) of this section, including, but not limited to, switching and routing features and functions and enhanced services functionalities.

It is immediately obvious that the extensive language proposed by Ameritech Illinois goes far beyond the simple language of the rules, and provides what is merely Ameritech Illinois' interpretation of these rules. (TDS Metrocom has not disputed the language in Section 6.6 related to stand alone switches, which is consistent with and all that is required to comply with 47 CFR 51.323(c).) The result of the remaining paragraphs would be to place the burden on TDS Metrocom to justify any particular piece of equipment, rather than place the burden on Ameritech Illinois to show that the equipment does not meet the

requirements of the Act. This is directly contrary to the FCC's ruling in the Advanced Services Order.<sup>6</sup>

Rather, our rules require incumbent LECs to permit collocation of any equipment required by the statute unless they first "prove to the state commission that the equipment will not be actually used by the telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements. (ASO para 28 47 C.F.R. §§ 51.323 (b), (c).)

The portion of 47 C.F.R. §§ 51.323 (b) not cited by Ameritech specifically provides:

(b) Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for the purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment will not be actually used by the telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements.

Ameritech Illinois's language impermissibly shifts this burden of proof.

Ameritech Illinois has cited no legal authority that shows that Ameritech Illinois has proved to this Commission that any of the detailed language it proposes complies with 47 C.F.R. §§ 51.323 (b).

Further, leaving in certain language that indicates where Ameritech Illinois agrees to allow collocation of certain equipment is proper, because Ameritech

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<sup>6</sup> *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability* (CC Docket No. 98-147; FCC 99-48 ). Released: March 31, 1999; Adopted March 18, 1999

Illinois, once it offers such terms to one CLEC, must, by the terms of the Act, offer the same terms to other CLECs on a non-discriminatory basis. Since these so called "voluntary agreements" to allow certain equipment are now part of the SBC standard agreement, and are thus offered to all CLECs, Ameritech Illinois should be required to offer them to TDS Metrocom.

Once again, the Panel in the Wisconsin arbitration awarded this issue to TDS Metrocom. This issue should be awarded to TDS Metrocom in Illinois as well.

## Issue TDS-80

### Should TDS be permitted to collocate equipment pending a dispute about whether such equipment may lawfully be collocated?

#### Collocation Sections 6.13 and 6.13.1

#### DISPUTED LANGUAGE:

APPENDIX COLLOCATION - SBC-13STATE  
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6.13 In the event Collocator submits an application requesting collocation of certain equipment and SBC-13STATE determines that such equipment is *not necessary for interconnection or access to UNEs* or does not meet the minimum safety standards *or any other requirements of this Appendix*, the Collocator must not collocate the equipment. If Collocator disputes such determination by SBC-13STATE, Collocator may not collocate such equipment unless and until the dispute is resolved in its favor. If SBC-13STATE determines that Collocator has already collocated equipment which *is not necessary for interconnection or access to UNEs* or does not meet the minimum safety requirements or any other requirements of this Appendix, the Collocator must, *except in the circumstance set forth below*, remove the equipment from the collocation space within ten (10) written notice from SBC-13STATE. Collocator will be responsible for the removal and all resulting damages. If Collocator disputes such determination, Collocator must remove such equipment pending the resolution of the dispute *unless (a) the equipment was collocated with the authorization of SBC-13STATE and (b) the ground on which SBC-13STATE has determined the equipment must be removed is that the equipment is not necessary for interconnection or access to UNEs*. If the Parties do not resolve the dispute, SBC-13STATE or Collocator may file a complaint at the Commission seeking a formal resolution of the dispute.

6.13.1 In the event Collocator submits an application requesting collocation of certain equipment and SBC-13STATE determines that such equipment is not necessary for interconnection or access to UNEs, Collocator may collocate the equipment, provided Collocator timely disputes such determination by SBC-13STATE, unless and until the dispute is resolved. If the Parties do not resolve the dispute, SBC-13STATE or Collocator may file a complaint at the Commission seeking a formal resolution of the dispute.

## **ARGUMENT:**

This issue is similar to Issue TDS-78 above. Since the burden is on Ameritech Illinois to prove that equipment does not meet the requirements for collocation, TDS Metrocom should be permitted to collocate equipment pending resolution of the dispute. The Wisconsin Panel again found this issue in favor of TDS Metrocom, and its reasoning on the issue is instructive:

### **B. Decision.**

A requirement that provides that a CLEC must not collocate equipment that Ameritech has determined is unnecessary is an invitation for Ameritech to make such determinations in all cases where it seeks to delay or prevent a CLEC from collocating equipment, with no consequences for such delaying tactics. Based on the analysis of Issue TDS-78, where the FCC clearly places the burden upon Ameritech to demonstrate that the equipment is unnecessary, and notwithstanding the language that appears to have been agreed to in section 6.13, this Panel awards the following language for sections 6.13 and sections 6.13.1.

Decision of the Panel in Docket 05-MA-123, page 65.

This Commission should also be vigilant in exposing language in the agreement which gives Ameritech Illinois an invitation to engage in anti-competitive behavior without negative consequence and instead allow language which either removes the incentive, or at the very least provides for some kind of negative consequence to Ameritech Illinois for engaging in behavior that is designed to destroy competition. Consistent with this purpose, the language proposed by TDS Metrocom should be adopted for this issue.

## Issue TDS-96

**Should TDS Metrocom be permitted to increase the size of its collocation space when it is using less than 60% of the space it already has?**

### **Collocation Section 10.11**

#### **DISPUTED LANGUAGE:**

APPENDIX COLLOCATION - **SBC-13STATE**

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10.11 **SBC-13STATE** shall allow CLEC to augment its collocation space when *they reach a 60 percent utilization rate and shall allow CLEC to begin the applications process prior to reaching the 60% utilization rate if CLEC expects to achieve 60% utilization before the process is completed.*space is available.

#### **ARGUMENT:**

Ameritech Illinois seems to be accusing TDS Metrocom of attempting to hoard collocation space, but Ameritech Illinois has failed to produce any evidence of such “hoarding” by TDS Metrocom. Whatever problems may occur with any particular CLEC attempting to take too much space can be dealt with by complaint procedures and dispute resolution procedures. Once again, Ameritech Illinois’ concern for other CLECs rings hollow, since the language Ameritech Illinois proposes does not even mention other CLECs needing the space, and certainly does not condition the arbitrary 60% cut off on any need for the space. In fact, as shown by the testimony of the Ameritech witness Ms. Fuentes, the arbitrary cutoff actually encourages CLECs to err on the side of taking more space than they need initially, so that they will not get trapped in a situation where they cannot augment

their space to accommodate growth. (Ameritech Exhibit 2, Fuentes Direct p. 6, lines 3-6) (Tr. p. 256, line 7). Given the lack of any support for the arbitrary 60% figure in the record, the language proposed by TDS Metrocom should be adopted for this section. Once again, the Wisconsin Panel awarded this issue to TDS Metrocom.

## Issue TDS-100

### Should Ameritech Illinois be proportionately liable for damages it jointly causes with third parties?

#### Collocation Section 14.2

#### DISPUTED LANGUAGE:

APPENDIX COLLOCATION - SBC-13STATE

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- 14.2 Third Parties – CLEC acknowledges and understands that SBC-13STATE may provide space in or access to the Eligible Structure to other persons or entities (“Others”), which may include competitors of CLEC; that such space may be close to the dedicated collocation space, possibly including space adjacent to the dedicated collocation space and/or with access to the outside of the dedicated collocation space; and that if CLEC requests a cage around its equipment, the cage dedicated collocation space is a permeable boundary that will not prevent the Others from observing or even damaging CLEC’s equipment and facilities. *In addition to any other applicable limitation, SBC-13STATE shall have absolutely no liability with respect to any action or omission by any other, regardless of the degree of culpability of any such other or SBC-13STATE, and regardless of whether any claimed SBC-13STATE liability arises in tort or in contract. CLEC shall save and hold SBC-13STATE harmless from any and all costs, expenses, and claims associated with any such acts or omission by any Other acting for, through, or as a result of CLEC. SBC-13STATE will be liable to CLEC for damages only to the extent that SBC-13STATE's fault or negligence contributed to the loss or damage.*

## **ARGUMENT:**

TDS Metrocom proposes that Ameritech Illinois be proportionately liable for damage it may cause. In order to accomplish this, TDS Metrocom has deleted language proposed by Ameritech Illinois which stated that SBC 13 STATE will have “absolutely no liability with respect to any action or omission by any other regardless of the degree of culpability of any such other or SBC 13 STATE.” Thus, under the Ameritech Illinois scenario, if Ameritech Illinois were 99 percent at fault for damages and a third party were 1 percent at fault, Ameritech Illinois would disclaim any and all liability for the damage it primarily caused. This is patently unfair. By deleting the offending Ameritech Illinois language, and inserting the language requested by TDS Metrocom, Ameritech Illinois would be liable, but only to the proportional extent that it caused the damages. Contrary to the assertions of Ameritech Illinois, this does not require Ameritech Illinois to indemnify any other party but merely makes Ameritech Illinois liable for that proportion of the damages which Ameritech Illinois in fact causes.

Ameritech Illinois has staked out the extreme territory that it should not be responsible no matter how guilty it is, and this should not be allowed to stand. The Panel in Wisconsin found this issue in favor of TDS Metrocom. The TDS Metrocom proposal that Ameritech Illinois be liable in the same proportion that it is found to be at fault is entirely reasonable and should be awarded on this issue.

## Issue TDS-101

How much notice should Ameritech Illinois be required to give prior to a major construction project?

### Collocation Section 17.1

#### DISPUTED LANGUAGE:

APPENDIX COLLOCATION - SBC-13STATE

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- 17.1 Except in emergency situations, SBC-13STATE shall provide CLEC with written notice at least *five (5)* twenty (20) business days, or such longer period as Ameritech may provide itself, prior to those instances where SBC-13STATE or its subcontractors may be undertaking a major construction project in the general area of the Dedicated Space or in the general area of the AC and DC power plants which support the Dedicated Space.

And

## Issue TDS-102

How much notice should Ameritech Illinois be required to give prior to scheduled AC or DC power work?

### Collocation Section 17.3

## **DISPUTED LANGUAGE:**

APPENDIX COLLOCATION - **SBC-13STATE**  
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- 17.3 **SBC-13STATE** will provide CLEC with written notification within at least *ten (10)* twenty (20) business days or such longer period as Ameritech may provide itself, of any scheduled AC or DC power work or related activity in the Eligible Structure that will cause or has the risk of causing an outage or any type of power disruption to CLEC Telecom Equipment. SBC-13STATE will provide CLEC with the alternate plan to provide power in the case of such outage. If SBC does not have an alternate plan, SBC will make reasonable accommodations to allow CLEC to provide alternate power. All such work will be planned and executed in a manner that is non-discriminatory with respect to affecting CLEC's and SBC-13STATE's equipment. **SBC-13STATE** shall provide CLEC immediate notification by telephone of any emergency power activity that would impact CLEC Telecom Equipment.

## **ARGUMENT:**

On this issue the Wisconsin Panel awarded compromise intervals of 10 and 15 days respectively, however TDS Metrocom feels that Ameritech reasonably has notice of such projects much more than 20 days ahead of time, and, therefore, there is no valid reason to accept less than the 20 days originally proposed. Ameritech Illinois has never provided any justification for its position that the 20 days requested by TDS Metrocom is not reasonable. On the contrary, TDS Metrocom introduced evidence from Ameritech Illinois' own documents that referenced a 20 day interval for notice of these major projects. While TDS Metrocom is willing to accept the 20 days, it should be noted that Ameritech Illinois is required to give TDS Metrocom at least as much notice as it gives itself pursuant to the non-discriminatory requirements of the Act and the FCC rules. It

is ludicrous to assume that Ameritech Illinois plans projects that could affect power to its own equipment less than 20 days in advance. The language proposed by TDS Metrocom is just and reasonable and should be awarded by the Panel.

Despite Ameritech Illinois' attempts to create a smokescreen around this issue, TDS Metrocom has not taken the position that the collocation handbook should trump the provisions of the agreement. However, the fact that Ameritech Illinois has published the intervals requested by TDS Metrocom in its collocation handbook, including the current version which exists today on Ameritech's web site, is strong evidence that the 20-day interval requested by TDS Metrocom is much more reasonable than the 5- or 10-day interval proposed by Ameritech Illinois. This position is supported by the testimony of Staff witness Murray (Tr. p. 351, line 13; see also Staff Exhibit 2, p. 3, lines 22-23). If, in fact, Ameritech Illinois is scheduling major projects which could interrupt service and power on only 5 days notice, it ought to stop. That is not sufficient time to plan for those types of projects and introduce undue risk to interruption of service to both CLEC customers and Ameritech Illinois' customers. If, on the other hand, Ameritech Illinois is giving itself more than the 5-day notice, the non-discriminatory provisions of the Act require that it provide at least the same amount of notice to TDS Metrocom that it provides for itself. In either event, the TDS Metrocom language providing for the minimum 20-day notice is much more reasonable and should be awarded for these sections.

## Issue TDS-103

### Should the insurance provisions be governed by the General Terms and Conditions?

#### Collocation Section 18

#### DISPUTED LANGUAGE:

APPENDIX COLLOCATION - SBC-13STATE

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### 18. INSURANCE

- 18.1 The parties obligations with respect to insurance coverage will be as set forth in the General Terms and Conditions. *Collocator shall furnish SBC-13STATE with certificates of insurance which evidence the minimum levels of insurance set forth in the General Terms and Conditions, and state the types of insurance and policy limits provided by Collocator. SBC-13STATE shall be named as an ADDITIONAL INSURED on general liability policy.*

*SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED OR MATERIALLY CHANGED, THE ISSUING COMPANY WILL MAIL THIRTY (30) CALENDAR DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER (S)*

- 18.2 *In addition to the insurance requirements set forth in the General Terms and Conditions, Collocator must maintain all Risk Property coverage on a full replacement cost basis insuring all of Collocator's personal property situated on or within the Eligible Structure. Collocator releases SBC-13STATE from and waives any and all right of recovery, claim, action or cause of action against SBC-13STATE, its agents, directors, officers, employees, independent contractors, and other representatives for any loss or damage that may occur to equipment or any other personal property belonging to Collocator or located on or in the space at the request of Collocator when such loss or damage is by reason of fire or water or the elements or any other risks that would customarily be included in a standard all risk insurance policy covering such property, regardless of cause or origin, including negligence of SBC-13STATE, its agents, directors, officers, employees, independent contractors, and other representatives. Property insurance on Collocator's fixtures and other personal property shall contain a waiver of subrogation against SBC-13STATE, and any rights of Collocator against SBC-13STATE for*

*damage to Collocator's fixtures or personal property are hereby waived. Collocator may also elect to purchase business interruption and contingent business interruption insurance, knowing that **SBC-13STATE** has no liability for loss of profit or revenues should an interruption of service occur that is attributable to any Physical Collocation arrangement provided under this Appendix.*

- 18.3 All policies purchased by Collocator shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by **SBC-13STATE**.*
- 18.4 All insurance must be in effect on or before occupancy date and shall remain in force as long as any of Collocator's equipment or other Collocator facilities or equipment remain within the Eligible Structure.*
- 18.5 Collocator shall submit certificates of insurance and policy binders reflecting the coverages specified above prior to, and as a condition of, **SBC-13STATE**'s obligation to turn over the Physical Collocation Space to Collocator or to permit any Collocator-designated subcontractors into the Eligible Structure pursuant to Sections 3.7 and 3.7.3. Collocator shall arrange for **SBC-13STATE** to receive thirty-(30) calendar day's advance written notice from Collocator's insurance company(ies) of cancellation, non-renewal or substantial alteration of its terms.*
- 18.6 Collocator must also conform to recommendations related to safety and minimization of hazards made by **SBC-13STATE**'s Property Insurance Company, if any, unless **SBC-13STATE** chooses not so conform in the Eligible Structure where the Physical Collocations pace is located.*
- 18.7 Failure to comply with the provisions of this "Insurance" Section will be deemed a material breach of this Agreement.*
- 18.8 Failure to comply with the provisions related to insurance will be deemed a material breach of this Appendix.*

### **ARGUMENT:**

The Panel here should be guided by a determination of what is just, reasonable, and promotes competition. The parties have agreed that most of the insurance provisions will be provided within the General Terms and Conditions. Ameritech Illinois has proposed the language at issue here to be additional terms

covering insurance. TDS Metrocom objects to these provisions as being unduly one-sided. For example, Section 18.2 requires that TDS Metrocom waive all claims that might have been covered by insurance, yet does not require Ameritech Illinois to make a similar undertaking toward TDS Metrocom. Section 18.3 makes all TDS Metrocom insurance primary to Ameritech Illinois policies, when in fact the insurance provisions should be basically reciprocal, and thus neither party's insurance should be primary with respect to the other. Such one-sided provisions are anti-competitive and should not be allowed.

Section 18.6 would require TDS Metrocom to make unknown and unspecified changes to its collocation arrangements with the sole goal of satisfying Ameritech Illinois' insurance inspector. In short, TDS Metrocom would spend money to make Ameritech Illinois' insurance premiums lower. The safety standards applicable to collocation are as agreed to by the parties and set forth in the agreement. Beyond those, TDS Metrocom should not be required to conform to additional standards, or make costly changes in its collocation arrangements upon request of Ameritech Illinois' insurance inspector.

The insurance provisions in the General Terms and Conditions require each side to maintain insurance and to look to that insurance to cover liability for damages it may cause. Thus, the party that causes the damage should use its insurance to pay for the damages. What Ameritech Illinois attempts to do, as it does in other portions of the agreement, is to have TDS Metrocom pay for damages (or cover those damages through insurance) even when the damages are

caused by Ameritech Illinois' fault. TDS Metrocom submits that this is unfair, and there is no valid reason under the Act for Ameritech Illinois to be protected from its own negligence or damages which it causes through its own fault.

Requiring TDS Metrocom to protect Ameritech Illinois from Ameritech Illinois' own negligence is clearly anti-competitive and discriminatory. Thus, as requested by TDS Metrocom, the provisions of Article 18 of Appendix Collocation should not be inserted in the agreement. The Wisconsin Panel found in favor of TDS Metrocom on this issue and ordered that all of the language for Section 18 be stricken. This was not a subject of comments filed by Ameritech in response to the award. TDS Metrocom requests that this Panel also award this issue to TDS Metrocom and order that the language proposed by Ameritech Illinois not be included in the Agreement.

**Issue TDS-107**

**Is TDS Metrocom entitled to charge reciprocal compensation for terminating FX calls?**

**Reciprocal Compensation Section 2.7**

**DISPUTED LANGUAGE:**

APPENDIX RECIPROCAL COMPENSATION-**SBC-13STATE**

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*2.7 Calls delivered to numbers that are assigned to an exchange within a common mandatory local calling area but where the receiving party is physically located outside the common mandatory local calling area of the exchange to which the number is assigned are either Feature Group A (FGA) or Foreign Exchange (FX) and are not Local Calls for intercarrier compensation and are not subject to local reciprocal compensation.*

**ARGUMENT:**

As a fundamental operational matter, there is no way for TDS Metrocom to know which calls are FX and which are not. The entire reason for having FX service is that a call which might otherwise originate outside of a local calling area should appear to be for all intents and purposes a local call. Additionally, from the standpoint of the network, these calls look exactly like local calls being routed between Ameritech Illinois and TDS Metrocom local switches. While it may be possible to identify FX calls, it is would be a very manual and expensive process. (Tr. p. 222, lines 3-22; p. 223, line 17).

TDS Metrocom still would view these calls as local calls and in fact, so would Ameritech Illinois. Ameritech Illinois will bill the customer for calls

originated to an FX customer as local calls. An Ameritech Illinois customer in making an FX call will be billed for a local call not an intraLATA toll call which is in fact what a “normal” call would be. So despite the fact that Ameritech Illinois claims that these are not local calls for reciprocal compensation purposes, Ameritech Illinois does treat these as local calls for their own retail billing purposes. Because TDS Metrocom interconnects at each end office where it has NXXs, TDS Metrocom and Ameritech Illinois each incur exactly the same costs for terminating an FX call from Ameritech as any other local call. The fact that TDS Metrocom may or may not choose to transport that call over its own facilities to a customer located a distance away is essentially invisible from an operational standpoint.

In an FX scenario under the Ameritech Appendix FX, Ameritech Illinois would bill a premium charge for transport and then treat all calls by that customer as local. However, in the area of reciprocal compensation it wants to change the story and characterize these calls as non-local so it is not required to pay the commensurate reciprocal compensation. This, coupled with the fact that operationally the terminating carrier cannot differentiate a local call from an FX call, clearly supports the fact that reciprocal compensation should be paid on FX calls.

The Michigan Public Service Commission, recently ruled on this precise issue *In the Matter of Application of Ameritech Michigan to Revise its Reciprocal*

*Rate Structure and to Exempt Foreign Exchange Service from Payment of*

*Reciprocal Compensation, Case No. U-12696.* The Commission found:

The Commission rejects the proposal to reclassify FX calls as non-local for reciprocal compensation purposes. Ameritech Michigan has not explained whether, or how, the means of routing a call placed by one LEC's customer to another LEC's point of interconnection affects the costs that the second LEC necessarily incurs to terminate the call. ***As a matter of historical convention, the routing of that call, i.e., whether or not it crosses exchange boundaries, has not been equated with its rating, i.e., whether local or toll.*** Moreover, the discretion that CLECs exercise in designing their local calling areas is a competitive innovation that enables them to provide valuable alternatives to an ILEC's traditional service. The Commission finds no reason to change these standards, particularly if the end result would be an unnecessary restriction on the services that customers want and need. Moreover, the application does not address how the carriers would make the necessary changes to their billing systems or whether the changes would be technically feasible at an affordable cost for both Ameritech Michigan and the CLECs. (Emphasis added)

The reasoning of the Michigan Commission is persuasive on this issue.

Therefore, TDS Metrocom requests that this Commission delete the language as requested by TDS Metrocom.

## **Issue TDS-112**

### **What process and rate should apply when Ameritech Illinois is the mandatory PTC?**

#### **Reciprocal Compensation Section 6.4**

#### **DISPUTED LANGUAGE:**

APPENDIX RECIPROCAL COMPENSATION-**SBC-13STATE**

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**SBC-13STATE**/CLEC

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- 6.4 In those **SBC-13STATE**s where Primary Toll Carrier (PTC) arrangements are mandated, for intraLATA Toll Traffic which is subject to a PTC arrangement and where **SBC-13STATE** is the PTC, **SBC-13STATE** shall deliver such intraLATA Toll Traffic to the terminating carrier in accordance with the terms and conditions of such PTC arrangement. Upon receipt of verifiable Primary Toll records, **SBC-13STATE** shall reimburse the terminating carrier at **SBC-13STATE**'s **CLEC**'s applicable *tariffed* terminating switched access rates. When transport mileage cannot be determined, an average transit transport mileage shall be applied as set forth in Appendix Pricing.

#### **ARGUMENT:**

Ameritech Illinois has sought to limit TDS Metrocom to charging a rate for intraLATA toll that is no more than Ameritech Illinois' rate.

In a case prior to its recent access order, the FCC specifically held that the current ILEC rate is not a cap on access rates, and the access rates as charged by CLECs must be paid, unless a carrier makes an affirmative showing that such rates are not just and reasonable.

As a CLEC, MGC is not subject to our part 69 access-charge rules, nor is it required to file tariffs under part 61 of our rules. Indeed, to the extent a review of the reasonableness of a CLEC's rates depends on a carrier-

specific review of the costs of providing service, it is impossible to be categorical on this point since a CLEC's costs may not be comparable to those of an ILEC.

*In the Matter of Sprint Communications Company, L.P., Complainant, v. MGC Communications, Inc., Defendant* File No. EB-00-MD-002 15 FCC Rcd 14027; Release-Number: FCC 00-206, June 9, 2000 Released; Adopted June 7, 2000.

TDS Metrocom submits that this is the better reasoned holding, and the one to which the FCC should return upon reconsideration of its recent access order.<sup>7</sup> Of course the FCC order only applies to interstate access charges, and this Commission should exercise its jurisdiction and discretion and decline to follow the FCC in its error with respect to intrastate access charges.

The FCC correctly noted that carriers of toll traffic are purchasing access services from the ILEC. What the FCC fails to acknowledge is that the FCC order may now require a CLEC to sell its access services to other carriers below cost. This is creating a subsidy from CLECs to the other carriers. The FCC attempts to justify this by observing that toll carriers cannot choose the CLEC that serves the end user. While this is true, it is also true that the CLEC does not have the cost lowering advantages of 100 years of government sponsored monopoly. If the FCC and this Commission truly wish for competition to be established in the face of this entrenched monopoly, requiring CLECs to sell services to the monopoly ILEC

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<sup>7</sup> Seventh Report and Order, CC Docket 96-262, Released April 27, 2001.

at rates below cost is a plan that will certainly result in extinguishing the spark of competition that has taken hold. If this Commission were to adopt such an unreasonable scheme, it would create a system where the CLECs subsidize the ILEC by providing services at rates that are below cost. TDS Metrocom's Illinois CC No. 3 contains rates for termination of intraLATA toll traffic in Section 17. The language proposed by TDS Metrocom states that each party will pay the other's access rate. This is the language that the Panel should award.

## **Issue TDS-119**

### **What should be the compensation for termination of intercompany traffic for intrastate intraLATA toll service traffic?**

#### **Appendix Reciprocal Compensation Section 11.1**

#### **DISPUTED LANGUAGE:**

APPENDIX RECIPROCAL COMPENSATION- **SBC-13STATE**

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**SBC-13STATE/CLEC**

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- 11.1 For intrastate intraLATA toll service traffic, compensation for termination of intercompany traffic will *be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge where applicable, as set forth in each Party's Intrastate Access Service Tariff, but not to exceed the compensation contained in an the ILEC's tariff in whose exchange area the End User is located.* For interstate intraLATA intercompany toll service traffic, compensation for termination of intercompany traffic will *be at terminating access rates for MTS and originating access rates for 800 Service including the CCL charge, as set forth in each Party's interstate Access Service Tariff, but not to exceed the compensation contained in the ILEC's tariff in whose exchange area the End User is located.*

#### **ARGUMENT:**

For the reasons set forth under Issue TDS-112, the Panel should award the language proposed by TDS Metrocom.

## Issue TDS-123

### What limitations and liabilities should attach to TDS Metrocom for use of electronic interfaces?

#### Appendix OSS Section 3.2.1

#### DISPUTED LANGUAGE:

APPENDIX OSS-RESALE & UNE-SBC-13 STATE

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SBC-13STATE/CLEC

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- 3.2.1 For SBC-13STATE, CLEC agrees to utilize SBC-13STATE electronic interfaces, as described herein, only for the purposes of establishing and maintaining Resale Services or UNEs through SBC-13STATE. In addition, CLEC agrees that such use will comply with the summary of SBC-13STATE's Competitive Local Exchange Carrier Security Policies and Guidelines identified in section 9 of this Appendix. *Failure to comply with such security guidelines may result in forfeiture of electronic access to OSS functionality. In addition, CLEC shall be responsible for and indemnifies SBC-13STATE against any cost, expense or liability relating to any unauthorized entry or access into, or use or manipulation of SBC-13STATE's OSS from CLEC systems, workstations or terminals or by CLEC employees or agents or any third party gaining access through information and/or facilities obtained from or utilized by CLEC and shall pay SBC-13STATE for any and all damages caused by such unauthorized entry.*

#### ARGUMENT:

As conceded by Ameritech Illinois, TDS Metrocom has agreed to abide by the Competitive Local Exchange Carrier Security Policies and Guidelines for electronic access to Ameritech Illinois' OSS. Nevertheless, Ameritech Illinois seeks to include contract language that would allow Ameritech Illinois to summarily bar TDS Metrocom from access to the electronic interfaces for failure to comply and make TDS Metrocom strictly liable for costs or damages related to

access to the electronic interfaces through terminals or information supplied by TDS Metrocom, regardless of whether TDS Metrocom was at fault. Given TDS Metrocom's agreement to honor Ameritech Illinois' Security Policies and Guidelines, and the additional safeguards embodied in the dispute resolution process, the provisions proposed by Ameritech Illinois are unnecessary.

The practical effect of summarily denying TDS Metrocom access to the electronic interfaces would be to put TDS Metrocom out of business within Ameritech Illinois' territory. Ameritech Illinois should not be able to take such drastic action outside of the termination and/or dispute resolution process, especially where the alleged violation of Ameritech Illinois' Security Policies and Guidelines has not been proven and merely is being investigated. Instead, There should be notice and an opportunity to ensure any alleged violation could be addressed in the dispute resolution process, which includes safeguards and the availability of Commission oversight. Accordingly, the Commission should reject the language proposed by Ameritech Illinois that would allow it to unilaterally and summarily deny TDS Metrocom access to electronic interfaces.

With regard to Ameritech Illinois' attempt to make TDS Metrocom strictly liable for costs or damages related to access to the electronic interfaces through terminals or information supplied by TDS Metrocom, regardless of whether TDS Metrocom was at fault, the General Terms and Conditions already contain adequate language which address issues of indemnification and payment for damages when one party is at fault. (*See* GTC, Article 12). Further, there is a

dispute resolution process that Ameritech Illinois would have available if it believed that TDS Metrocom's failure to comply with the agreement had caused damage to Ameritech Illinois. (*See* GTC, Article 16). Consequently, sufficient safeguards exist to protect Ameritech Illinois. The contract language proposed by Ameritech Illinois, which would make TDS Metrocom liable regardless of whether TDS Metrocom was at fault, should be rejected by this Panel.

This is another example of Ameritech Illinois attempting to paint itself as the protector of competition by stating that it must have the power to unilaterally block access by TDS Metrocom to the OSS system in order to protect other CLECs. While Ameritech Illinois states that it may block access to the OSS system only for very specific reasons, Ameritech Illinois has set itself up as the sole arbiter of those reasons. The example given in the testimony of the Ameritech witness speaks of using this section in cases of "intentional misuse" by a CLEC. (Exhibit Ameritech 7, Mitchell Testimony, p. 4, lines 6-8) The language proposed is much broader and is not limited to intentional misuse. Further, Ameritech Illinois argues that it is merely suspending access temporarily while it investigates. However, the language proposed by Ameritech Illinois says nothing of the kind. It talks about termination, which is much more of a permanent result and makes no indication of when, if at all, access would be restored. In fact, it is only Ameritech Illinois who can determine in its own mind, without a scintilla of proof, that such violations have occurred under the vague standard in this language. Then Ameritech Illinois may cut off access to the OSS system and

leave it to TDS Metrocom to try and challenge Ameritech Illinois' unilateral, unsupported determination. Contrary to the assertion of Ameritech Illinois, this is precisely the type of "blank check" which this Commission should prevent Ameritech Illinois from having. In short, Ameritech Illinois is setting itself up to be able to shut off service to a CLEC before it has proven to a single soul that the violation which Ameritech Illinois claims, has in fact occurred. The damage that would occur to a CLEC by having to only process manual orders, and the competitive disadvantage at which this would put the CLEC with respect to Ameritech Illinois and other CLECs is obvious.

TDS Metrocom's position is entirely consistent with this Commission's holding in the Level 3 arbitration Docket No. 00-0332. In that order the Commission noted: "AI's indemnity argument is flawed. The language seems to imply that Level 3 should indemnify AI for all claims regardless of fault. There is not any justification for that kind of language." (P. 35)

The language proposed by TDS Metrocom for this section should be awarded for this issue.

## Issue TDS-124

Should TDS Metrocom be responsible for paying charges to Ameritech every time there is any inaccurate order?

### Appendix OSS Section 3.4

#### DISPUTED LANGUAGE:

APPENDIX OSS-RESALE & UNE-**SBC-13 STATE**

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**SBC-13STATE/CLEC**

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- 3.4 By utilizing electronic interfaces to access OSS functions, CLEC agrees to perform accurate and correct ordering as it relates to the application of Resale rates and charges, subject to the terms of this Agreement and applicable tariffs dependent on region of operation. In addition, CLEC agrees to perform accurate and correct ordering as it relates to **SBC-13STATE**'s UNE rates and charges, dependent upon region of operation, pursuant to the terms of this Agreement. CLEC is also responsible for all actions of its employees using any of **SBC-13STATE**'s OSS systems. As such, CLEC agrees to accept and pay all reasonable costs or expenses, including labor costs, incurred by **SBC-13STATE** *caused by any and all in attempting to provision orders, even if such orders are later discovered to be inaccurate due to* inaccurate ordering or usage of the OSS *by CLEC*, if such costs are not already recovered through other charges assessed by **SBC-13STATE** to CLEC. *If inaccurate orders are discovered prior to Ameritech taking actions to provision the orders, no additional charges will apply.* In addition, **SBC-13STATE** retains the right to audit all activities by CLEC using any **SBC-13STATE** OSS. All such information obtained through an audit shall be deemed proprietary and shall be covered by the Parties Non-Disclosure Agreement signed prior to or in conjunction with the execution of this Agreement.

**ARGUMENT:**

In Appendix OSS, Section 3.4, Ameritech Illinois proposes language that would make TDS Metrocom liable for even a single erroneous order. Ameritech Illinois' proposed language is unreasonable given its extensive service quality problems, which have been well documented in the press in recent months.

Further, under the performance measures agreed to in the OSS collaborative, there is no performance measure that requires Ameritech Illinois to begin paying costs or damages with the first error. In fact, with regard to most of the performance measures, Ameritech Illinois may have up to a 10 percent error rate or failure to comply before it is required to pay anything. Finally, to the extent occasional, inadvertent inaccurate ordering does occur, that is a normal cost of doing business and should not result in charges by Ameritech Illinois.

Similarly, Ameritech Illinois' proposed language that would require TDS Metrocom to indemnify Ameritech Illinois for all claims related to TDS Metrocom's use of the Ameritech OSS is unacceptable. Again, Ameritech Illinois is attempting to require TDS Metrocom to indemnify Ameritech Illinois regardless of whether TDS Metrocom actually was at fault. There are adequate indemnification provisions in the General Terms and Conditions which should govern this issue. Those provisions require a party to indemnify the other when the indemnifying party is at fault, but not in all other instances. This is the fair and correct standard. Consequently, the Panel should reject the language proposed by Ameritech Illinois in Section 3.4 of Appendix OSS.

While Ameritech Illinois states that it "would never" go after TDS Metrocom for each and every error, this is nonetheless precisely what the language proposed by Ameritech Illinois would allow. If Ameritech Illinois has no intention of exercising its right to charge for any and all errors, why does it insist on the language which allows it to charge for any and all errors? TDS Metrocom cannot accept Ameritech Illinois' blandishments to "trust us."

Further, Ameritech Illinois attempts to totally misstate TDS Metrocom's position concerning its statements, largely uncontested, that Ameritech Illinois itself has significant volumes of errors in its own orders and other processes, and that the performance remedy plan does not require Ameritech Illinois to begin paying with the first instance. TDS Metrocom introduces these facts to the Commission's attention not as some sort of "unclean hands" argument that Ameritech Illinois should not be able to charge for errors simply because it also makes errors, but to show that Ameritech Illinois must recognize that absolute 100% error-free processing is not an obtainable standard and that it is unfair for Ameritech Illinois to hold over TDS Metrocom the threat to charge for "any and all" errors when it is clear that some minor, inadvertent errors may creep into the process through no fault of TDS Metrocom.

It is ludicrous to assume that Ameritech Illinois' own personnel never make any errors when inputting orders into the OSS, and thus to say that the entire system is built around absolute 100% accuracy, and require that any deviation from 100% accuracy results in unrecovered costs is clearly an unsupportable

position. The language proposed by Ameritech Illinois for this section should not be awarded.

## **Issue TDS-144**

### **How are orders over TELIS handled?**

#### **NP Section 3.4.7**

#### **DISPUTED LANGUAGE:**

APPENDIX NP-EXHIBIT 1-**SBC-13 STATE**

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**SBC-13STATE/CLEC**

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- 3.4.7 For EDI orders. CLEC shall adhere to **SBC-12STATE**'s Local Service Request (LSR) format and PNP due date intervals. For orders placed over Telis, Ameritech will provide for an ASR format that integrates PNP ordering.

#### **ARGUMENT:**

Ameritech Illinois has stated that the problems related to the multiple submissions related to orders over TELIS will be rectified by the new EDI process. What Ameritech Illinois has failed to do is to make any commitment to that process in the agreement. Ameritech has been promising to replace TELIS for years. While TDS Metrocom is attempting to move to an EDI standard with Ameritech, so long as the TELIS process remains in place, it will still be subject to the same problems as noted by TDS Metrocom witness Jackson in his testimony, that the process is redundant and inefficient. (TDS Exhibit 5, Jackson Direct p. 24, lines 19-20). The Panel in the Wisconsin Arbitration awarded this issue to TDS Metrocom and this issue was not the subject of comments filed by Ameritech after the panels award. Therefore, the language proposed by TDS Metrocom should be awarded for this issue.

## Issue TDS-153

**Should TDS Metrocom be required to use Ameritech Illinois for all operator services, or may it contract with another provider upon reasonable notice to Ameritech Illinois of a change in service level?**

### Appendix OS Section 8.1

#### DISPUTED LANGUAGE:

APPENDIX OS - **SBC-13STATE**  
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**SBC-13STATE/CLEC**  
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- 8.1 *CLEC agrees that due to quality of service and work force schedule issues, **SBC-13STATE** will be the sole provider of OS for CLEC's local serving area(s) CLEC will provide SBC-13STATE at least 30 days notice prior to any significant change in service levels for OS under this appendix.*

**And**

## TDS-155

**Should TDS Metrocom be permitted to terminate this appendix so that it may obtain services from another provider upon reasonable notice to Ameritech Illinois?**

### Appendix OS Section 13.2

#### DISPUTED LANGUAGE:

APPENDIX OS - **SBC-13STATE**  
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**SBC-13STATE/CLEC**  
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- 13.2 If CLEC terminates this Appendix prior to the expiration of the term of this Appendix, CLEC shall pay **SBC-13STATE**, within thirty (30) days of the issuance of any bills by **SBC-13STATE**, all amounts due for actual services provided under this Appendix, *plus estimated monthly charges for the unexpired portion of the term. Estimated charges will be based on an average of the actual monthly service provided by **SBC-13STATE** pursuant to this Appendix prior to its termination.*

**ARGUMENT:**

These issues concern whether TDS Metrocom should be required to use Ameritech Illinois for all operator services, or whether it may terminate those services and contract with another provider upon reasonable notice to Ameritech Illinois of a change in service level. Operator Services is not a UNE and is being provided at market rates. As such, if TDS Metrocom is not satisfied with Ameritech Illinois' operator services or if it finds a better OS solution for its end-users, it should have the ability to cancel this service from Ameritech Illinois. Losing a customer to competition – regardless of the reason – is a risk that Ameritech Illinois takes being a competitive provider of operator services in the market. TDS Metrocom's proposed language for Section 8.2 is reasonable and it states that TDS Metrocom will provide Ameritech Illinois reasonable notice, at least 30 days, prior to any significant change in service levels for operator services.

Ameritech Illinois' assertion that it would be unfair and inefficient if Ameritech Illinois hired personnel and put resources in place to handle operator service demand from TDS Metrocom, only to have TDS Metrocom reduce or even eliminate its use of Ameritech Illinois' services, is unsound. To the contrary, it would be unfair if TDS Metrocom was required to solely use Ameritech Illinois' operator services as a requirement under the parties' interconnection agreement. Ameritech Illinois' further contention that it needs firm commitments from TDS

Metrocom as to operator service levels in order to perform the necessary advance planning and staffing to meet those service levels also is not valid.

The Commission should reject the language proposed by Ameritech Illinois for Section 13.2 as that language would penalize TDS Metrocom for an early termination and would thus be inconsistent with TDS Metrocom's express right to reduce or eliminate service under this appendix on 30 days notice as provided in Section 8.1. Further, the language proposed by Ameritech Illinois in Section 13.2 is clearly punitive. Ameritech Illinois would collect the full amount of its charges, calculated on the prior usage, for the remainder of the original term, but since the service would be terminated, Ameritech Illinois would experience significant savings in that it would not actually be providing the service. This failure to account for and offset the mitigation of Ameritech Illinois' damages renders the proposed recovery a penalty, and not an accurate estimation of the potential damages Ameritech Illinois might suffer.

For these reasons the language requested by TDS Metrocom should be awarded for Sections 8.1 and 13.2 of Appendix OS.

## **Issue TDS-158**

### **Must CLEC provide a portion of signaling links?**

#### **SS7 Section 2.5**

#### **DISPUTED LANGUAGE:**

APPENDIX SS7 - **SBC-13STATE**

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**SBC-13STATE/CLEC**

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- 2.5 The CLEC shall provide the portion of the signaling link from the CLEC premises within the LATA to the **SBC-12STATE** STP location or the CLEC SPOI. Pursuant to Appendix NIM, Section 3.4.2, signaling link may be provided over the joint SONET when CLEC is purchasing SS7 services from SBC-12STATE. CLEC shall identify the DS1 or channel of a DS1 that will be used for the signaling link.

#### **ARGUMENT:**

TDS Metrocom proposes that it be allowed to provide trunking over the joint SONET as it has been permitted to in the past and in a manner consistent with Section 3.4.2 of the NIM Appendix to this agreement. Section 3.4.2 of Appendix NIM states:

Where the Parties interconnect their networks pursuant to a Fiber Meet, the Parties shall jointly engineer and operate this Interconnection as a single point-to-point linear chain SONET system. Only Interconnection trunks or trunks used to provide ancillary services as described in Section 5 of Appendix ITR shall be provisioned over this facility.

TDS Metrocom witness Lawson testified that today TDS Metrocom is providing its SS7 trunking over the joint SONET in Wisconsin. (TDS Exhibit 3, Lawson

Direct p. 30, lines 3-5). Since TDS Metrocom has incurred one-half the cost to supply the Joint SONET system and TDS Metrocom purchases SS7 services from Ameritech Illinois, TDS Metrocom incurs the proper associated costs with providing the SS7 links. All the language proposed by TDS Metrocom for this section does is to make this section consistent with the current practice and the rest of the agreement.

Ameritech's witness Bates spends page after page of testimony trying to demonstrate that SS7 signaling links are not expressly mentioned in Appendix NIM-Section 3.4.2, and that therefore it is somehow forbidden for the links to be provided over the joint SONET. Ameritech Illinois' argument in this regard is entirely circular. If in fact the signaling links were specifically mentioned within NIM-Section 3.4.2, it would not be necessary to mention it again here. However, the entire import of the language requested by TDS Metrocom was to make it clear that the parties were currently using the joint SONET for providing these links, in a manner similar to that for ancillary services within NIM Section 3.4.2. Of course, NIM Section 5 does make repeated references to SS7 signaling, thus making it all the more reasonable for TDS Metrocom to assume that it could continue to provision the signaling links over the joint SONET. Ameritech Illinois seems to be arguing that because TDS Metrocom agreed to Section 3.4.2 of Appendix NIM, it cannot possibly advance the language it requires for this section. However, it is just as likely that the only reason TDS Metrocom agreed to

the language of Appendix NIM is that it had also proposed and continued to argue for this language to be included in Section 2.5 of the SS7 Appendix. Ameritech Illinois' hyper-technical reading of a single paragraph in this voluminous agreement and its attempts to read the two sections in isolation from each other should be rejected.

The other factor which Ameritech Illinois conveniently forgets is that the joint SONET is not a facility provided by Ameritech Illinois solely, but a facility for which TDS Metrocom pays fully one-half of the cost. Thus, to the extent that Ameritech Illinois expects TDS Metrocom to pay its share of the SS7 signaling links, TDS Metrocom is clearly doing so by paying one-half of the costs of the joint SONET. Ameritech Illinois makes much of the fact that this should not be allowed because the parties are "not starting from scratch" and this is precisely TDS Metrocom's point. Today the parties, rather than "starting from scratch," are providing the signaling links over the joint SONET.

Finally Ameritech Illinois' argument that signaling links should not be provided over the Join SONET because STPs are occasionally located at a distance has been completely eliminated by TDS Metrocom's language which restricts the use of the joint SONET for signaling links to those instances where TDS Metrocom is purchasing SS7 services from Ameritech Illinois. It seems somewhat illogical for Ameritech Illinois to argue that STPs to which signals must be transmitted are too far away when they are Ameritech Illinois' own STPs.

The language requested by TDS Metrocom for Section 2.5 of Appendix SS7 should be awarded for this issue.

## Issue TDS-167

### Should there be penalties for violation of agreement?

#### Resale Section 3.12

#### DISPUTED LANGUAGE:

APPENDIX RESALE - SBC-13STATE

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SBC-13STATE/CLEC

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- 3.12 If CLEC is in violation of any provision of this Appendix, SBC-13STATE will notify CLEC of the violation in writing. Such notice shall refer to the specific provision being violated. CLEC will have thirty (30) calendar days to correct the violation and notify SBC-13STATE in writing that the violation has been corrected. *SBC-13STATE will bill CLEC a sum equal to (i) the charges that would have been billed by SBC-13STATE to CLEC or any Third Party but for the stated violation. Should CLEC dispute the stated violation, CLEC must notify SBC-13STATE in writing of the specific details and reasons for its dispute within fourteen (14) calendar days of receipt of the notice from SBC-13STATE and comply with Sections 8.3 through 8.7 of the General Terms and Conditions of the Agreement to which this Appendix is attached. Resolution of any dispute by CLEC of the stated violation shall be conducted in compliance with the Dispute Resolution provisions set forth in the General Terms and Conditions of the Agreement to which this Appendix is attached.*

#### ARGUMENT:

TDS Metrocom proposes deleting the portions of this section calling for penalties. It is true that often parties will include “liquidated damage” provisions in their agreements. But a key factor of such liquidated damage provisions is that they are agreed to by the parties, as a reasonable estimation of the damages that would be incurred in the case of the specified breach. In this case TDS Metrocom does not agree that the provisions in Section 3.12 set forth by Ameritech Illinois

contain such a reasonable estimation. For example, the formula for the amount of money Ameritech Illinois intends to recover does not provide any offset for savings Ameritech Illinois might realize if the alleged violation relieves Ameritech Illinois from performing certain activities or functions.

It should be noted that this does not leave Ameritech Illinois without a remedy. If Ameritech Illinois believes that TDS Metrocom has breached the agreement, Ameritech Illinois may invoke the dispute resolution process under the agreement, and recover those actual damages which it is able to prove were incurred. Ameritech Illinois has provided no support for the idea that for this part of the entire agreement, Ameritech Illinois, and Ameritech Illinois only, should be relieved from its obligation to prove both that a breach occurred, and the amount of the resulting damages before it can recover. This issue was awarded to TDS Metrocom by the panel in the Wisconsin Arbitration, and was not the subject of comments by Ameritech after the panel's decision. The language proposed by Ameritech Illinois should be deleted as requested by TDS Metrocom.

## Issue TDS-190

### Should Ameritech Illinois be obligated to provision xDSL capable loops in instances where physical facilities do not exist?

#### DSL Section 4.6

#### DISPUTED LANGUAGE:

APPENDIX DSL-SBC-13STATE

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SBC-13STATE/CLEC

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4.6 This Agreement neither imposes on SBC-12STATE an obligation to provision xDSL capable loops in any instance where physical facilities do not exist nor relieves SBC-12STATE of any obligation that SBC-12STATE may have outside this Agreement to provision such loops in such instance. Where facilities require modifications they will be handled under the facilities modification process in Accessible Letter CLEC AM00-153, and the modifications thereto as reflected in issues A/F of the Interlocutory Order issued by the PSCW on December 15, 2000 in Docket 6720-TI-160, or the properly implemented successor thereto. SBC-12STATE shall be under no obligation to provide HFPL where SBC-12STATE is not the existing retail provider of the traditional, analog voice service (POTS). This shall not apply where physical facilities exist, but conditioning is required. In that event, CLEC will be given the opportunity to evaluate the parameters of the xDSL or HFPL service to be provided, and determine whether and what type of conditioning should be performed. CLEC shall pay SBC-12STATE for conditioning performed at CLEC's request pursuant to Sections 7.1 and 7.2 below.

#### ARGUMENT:

Ameritech Illinois appears to wish to continue to maintain the utterly inconsistent positions of including the language which says Ameritech Illinois has no duty to provide facilities where physical facilities do not exist but at the same time then somehow qualify that by also including the language in Section 2.9.1.1. It is hard to see how such an inconsistency may be allowed to stand. Clearly, if Ameritech Illinois admits that it has an obligation under the FMOD policy, at a

minimum the language requested by Ameritech Illinois stating it has no obligation must not also be inserted in the agreement. But as TDS Metrocom has noted above, it is important that this agreement provide a linkage between the obligations Ameritech Illinois undertakes here, and the obligations Ameritech Illinois undertakes through the FMOD Process. All of these issues are unavoidably inter-related, and to state that there must be some sort of artificial separation between them, as Ameritech Illinois apparently insists, is improper. If there were no issues related to provisioning of loops under the interconnection agreements, there would be no need for the FMOD policy and vice versa. Therefore it is entirely appropriate that the agreement contain an explicit reference stating when the FMOD policy will be applied by the parties with relation to provisioning of loops and other issues.

The language proposed by Ameritech Illinois should not be inserted into the agreement. The compromise language proposed by TDS Metrocom should be awarded for this issue.

## **Issue TDS-196**

### **What should Acceptance Testing include?**

#### **DSL Section 8.2**

#### **DISPUTED LANGUAGE:**

APPENDIX DSL-**SBC-13STATE**

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- 8.2 Should the CLEC desire Acceptance Testing, it shall request such testing on a per xDSL loop basis upon issuance of the Local Service Request (LSR). Acceptance Testing will be conducted at the time of installation of the service request. All loops shall be tested to [verify absence of load coils, excessive bridge taps, foreign voltage, grounds](#) or other elements that make the loop unsuitable *basic loop metallic parameters, continuity or pair balance*

#### **ARGUMENT:**

TDS Metrocom has proposed language stating that “all loops shall be tested to verify absence of load coils, excessive bridge taps, foreign voltage, grounds, pair gain devices, repeaters and line splitters or other disturbers which would normally be removed in conditioning a loop for xDSL service.” The language proposed by TDS Metrocom covers the requirements for delivering an xDSL capable loop according to the industry definitions. TDS Metrocom witness Lawson testified that TDS Metrocom has frequently received loops for which conditioning has been ordered, and paid for, but for which the conditioning has not been completed. (TDS Exhibit 3, Lawson Direct p. 31, lines 11-13). TDS Metrocom requests that there be some testing done to determine whether or not the

loops have been conditioned as TDS Metrocom has requested and paid for.

Ameritech has admitted that in the past TDS Metrocom has ordered and presumably paid for conditioning, but that the requested conditioning was never performed. (Exhibit Ameritech 1, Silver Testimony, p. 4; Tr. p. 230, lines 17-22)

There is no other provision in the agreement that provides for testing to see if conditioning that has been requested has actually been done, or if it has been done correctly. The language proposed by TDS Metrocom should be awarded to provide for adequate testing to show that the conditioning work that has been requested and paid for has been performed.

**Issue TDS-197**

**Should Ameritech Illinois be relieved of obligation to perform acceptance testing?**

**DSL Section 8.3.5**

**DISPUTED LANGUAGE:**

APPENDIX DSL-**SBC-13STATE**

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**8.3.5** **SBC-12STATE** *will be relieved of the obligation to perform Acceptance Testing on a particular loop and will assume acceptance of the loop by the CLEC when the CLEC cannot provide a “live” representative (through no answer or placement on hold) for over ten (10) minutes. **SBC-12STATE** may then close the order utilizing existing procedures, document the time and reason, and may bill the CLEC as if the Acceptance Test had been completed and the loop accepted, subject to Section 8.4 below.*

**ARGUMENT:**

Ameritech Illinois has proposed language that states Ameritech Illinois is relieved of its obligation to perform testing if they cannot reach a live representative or are on hold for more than 10 minutes. TDS Metrocom requests that this provision be deleted. TDS Metrocom has asked Ameritech Illinois for reciprocal consideration when dealing with its service centers and has been told that Ameritech Illinois cannot and will not guarantee that TDS Metrocom will not experience hold times in excess of 10 minutes. It therefore is unreasonable to allow Ameritech Illinois to place this requirement on TDS Metrocom when its personnel are required to call into TDS Metrocom centers. TDS Metrocom will make every effort to complete the testing as scheduled since it is in TDS

Metrocom's best interest to make sure that the loops being delivered are adequate for TDS Metrocom needs. There is no need for the arbitrary cutoff proposed by Ameritech Illinois. Further, the language proposed by Ameritech Illinois is unreasonable in that it requires TDS Metrocom to pay for a test that has not been completed. The Panel in Wisconsin awarded this issue to TDS Metrocom. Therefore the language proposed by Ameritech Illinois should be deleted.

## **Issue TDS-201**

### **What should Ameritech Illinois repair at no charge to TDS Metrocom?**

#### **DSL Section 9.4**

#### **DISPUTED LANGUAGE:**

APPENDIX DSL-**SBC-13STATE**

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**SBC-13STATE**/CLEC

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9.4 Maintenance, other than assuring loop continuity and balance on unconditioned or partially conditioned loops greater than 12,000 feet, will only be provided on a time and material basis. On loops where CLEC has requested recommended conditioning not be performed, **SBC-12STATE**'s maintenance will be limited to verifying loop suitability for POTS. For loops having had partial or extensive conditioning performed at CLEC's request, **SBC-12STATE** will verify continuity, the completion of all requested conditioning, and will repair at no charge to CLEC any defects which would be unacceptable for POTS *and* or which *do not* result from *the loop's modified design*, conditioning or other work performed by SBC-12STATE. For loops under 12,000 feet, **SBC-12STATE** will remove load coils, repeaters and excessive bridge tap at no charge.

#### **ARGUMENT:**

The language proposed by TDS Metrocom provides that Ameritech Illinois should repair any defects which would be unacceptable for POTS or which result from conditioning or other work performed by Ameritech Illinois. The language proposed by Ameritech Illinois would shield Ameritech Illinois from responsibility for any work performed, even if it performed the work incorrectly. Ameritech Illinois attempts to twist the meaning of the word "defect" to try to say that TDS Metrocom could try to have Ameritech Illinois do some type of repair,

even if Ameritech Illinois had done the original work correctly. This is an assault on the plain meaning of the word. The very definition of the term "defect" indicates that something was not performed correctly. There is no other provision in the contract which would require Ameritech Illinois to repair incorrectly performed conditioning work. Ameritech Illinois raises a red herring argument that somehow if it performed conditioning to TDS Metrocom's "specifications" TDS Metrocom could make Ameritech Illinois do additional work under this section if it did not like the "specifications". The essential fallacy of this argument is that there are no "specifications" given by TDS Metrocom. Conditioning is done to industry standards. The contract in the DSL Appendix provides for only two options, a loop will be conditioned or it will not be conditioned.

This issue was awarded to TDS Metrocom by the panel in the Wisconsin arbitration, and was not part of the comments filed by Ameritech in response to the panel's decision. There is no valid reason for Ameritech Illinois to be relieved of correcting deficiently performed work, and the language proposed by TDS Metrocom should be awarded for this section.

**Issue TDS-206**

**What efforts should Ameritech Illinois make concerning the availability of Ameritech Structure for TDS Metrocom's Attachments?**

**ROW Section 2.1.2**

**DISPUTED LANGUAGE:**

APPENDIX ROW-**SBC-AMERITECH**

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2.1.2 The availability of **SBC-AMERITECH** Structure for CLEC's Attachments is subject to and dependent upon all rights, privileges, franchises or authorities granted by governmental entities with jurisdiction, existing and future agreements with other persons not inconsistent with Section 15, all interests in property granted by persons or entities public or private, and Applicable Law, and all terms, conditions and limitations of any or all of the foregoing, by which **SBC-AMERITECH** owns and controls Structure or interests therein. SBC-AMERITECH will make all reasonable efforts modify or amend Franchises or authorities from government agencies, and to amend any agreements with private entities to remove any restrictions or impediments to providing CLEC access to Structures.

**ARGUMENT:**

Under the language proposed by TDS Metrocom, all Ameritech Illinois is required to do is: 1) to make reasonable efforts, and 2) to remove restrictions and impediments to CLEC access that are contained within *Ameritech's agreements*. Contrary to Ameritech Illinois' statements, this language does not require Ameritech Illinois to negotiate agreements on behalf of TDS Metrocom, nor does it require Ameritech Illinois to exercise rights of eminent domain. All it requires is that Ameritech Illinois, if it has signed an agreement or obtained a franchise which contains some terms or conditions that would prohibit TDS Metrocom from

attaching to an Ameritech Illinois structure, to make reasonable efforts to remove that impediment. Absent such a requirement, there would be no incentive for Ameritech Illinois to ever try to remove such a provision if proposed by a property owner or a government agency. In fact, there would be every incentive for Ameritech Illinois to try to insert such a provision. In either case this is a potentially serious impediment to competition, that can easily be removed by ordering the language proposed by TDS Metrocom.

Dated July 13, 2001.

By: \_\_\_\_\_

Peter L. Gardon  
Peter R. Healy  
Reinhart, Boerner, Van Deuren,  
Norris & Rieselbach, s.c.  
P.O. Box 2018  
Madison, WI 53701-2018  
608-229-2200

Owen E. MacBride  
Schiff Hardin & Waite  
6600 Sears Tower  
Chicago, IL 60606  
312-258-5680

Attorneys for  
TDS METROCOM, INC.